

ORIGINAL

1

REPORTER'S RECORD

VOLUME 12 OF 51

75010

TRIAL COURT CAUSE NO. 241-0978-04

THE STATE OF TEXAS \* IN THE DISTRICT COURT  
VERSUS \* SMITH COUNTY, TEXAS  
TRACY BEATTY \* 241ST JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE - P.M. SESSION

JULY 13, 2004

FILED IN  
COURT OF ORIGINAL APPEALS

JUN 14 2005

Troy C. Bennett, Jr., Clerk

On the 13th day of July, 2004, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the HONORABLE JACK SKEEN, JR., Judge  
Presiding, held in Tyler, Smith County, Texas:

Proceedings reported by computerized stenotype machine;  
Reporter's record produced by computer-assisted  
transcription.

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241ST JUDICIAL DISTRICT COURT  
SMITH COUNTY, TEXAS

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REPORTER'S NOTE

Uh-huh = Yes - Affirmative response

Huh-uh = No - Negative response

Quotation marks are used for clarity and do not necessarily  
indicate a direct quote.

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR  
241ST JUDICIAL DISTRICT COURT  
SMITH COUNTY, TEXAS

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P R O C E E D I N G S

(July 13, 2004)

(Open court, defendant present.)

(The following proceedings were reported by  
Kim Christopher, CSR:)

(Venireperson Norman enters the courtroom.)

THE COURT: Ms. Norman? Yes, ma'am. Just  
come right around and have a seat, please, ma'am.

We are on the record in Cause  
No. 241-0978-04, the State of Texas versus Tracy Beatty.  
State's counsel is present, defense counsel is present, and  
the defendant is present.

Ms. Norman, how are you this afternoon?

VENIREPERSON NORMAN: Fine.

THE COURT: Doing okay?

VENIREPERSON NORMAN: Uh-huh.

THE COURT: You remember when we were back --  
Thursday when we were talking about the voir dire individual  
selection process that you were going to go through? That's  
about what's getting ready to take place right now, and I  
just want to mention two or three things to you about that,  
okay?

Number one, there aren't any right or wrong  
answers to the questions that you're going to be asked.  
Both the State's attorneys and defense attorneys just want

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR  
241ST JUDICIAL DISTRICT COURT  
SMITH COUNTY, TEXAS



1 to find out how you truthfully feel about your views and  
2 whether or not you can follow certain laws they're going to  
3 go over with you. They'll talk to you about the different  
4 phases of the trial and sentencing procedures that come into  
5 effect if the defendant is convicted of the -- of an  
6 offense.

7 The oath that I gave you back on Thursday,  
8 all of you as a panel, that oath still applies, so your  
9 answers are under oath.

10 Can you think of anything in regard to that  
11 questionnaire that you filled out Thursday that you might  
12 want to tell us, anything that you need to add to that now?  
13 Sometimes, you know, you fill that out, ask a bunch of  
14 questions you never have thought of before. Anything you'd  
15 want to add to that now, tell us about?

16 VENIREPERSON NORMAN: No.

17 THE COURT: All right. Well, I'm going to go  
18 ahead, then, and let Mr. Bingham, the criminal district  
19 attorney here in Smith County, ask you some questions,  
20 Ms. Norman. Thank you.

21 PATRICIA ANN NORMAN,  
22 having been duly sworn as a member of the special venire,  
23 was examined as follows:

24 BY MR. BINGHAM:

25 Q. Ms. Norman, how are you doing?

1 A. Okay.

2 Q. Did you get paid your \$6?

3 A. Yes.

4 Q. This is probably going to be the hardest \$6 you've  
5 ever earned, because by the time you get out of here, it's  
6 not going to be worth it to you, I promise you.

7 This is a process where it takes some time,  
8 and we get to field some questions to you that you have to  
9 answer. And some of them are complicated, because it's not  
10 stuff you think of every day. You know, you don't sit back  
11 there and contemplate the special issues in a capital murder  
12 case normally.

13 And then just when I'm done asking you some  
14 questions, Mr. Perkins or Mr. Hawk will probably -- as  
15 they're entitled to, will ask you some more questions. Some  
16 of them might even be different than what we've asked. And  
17 sometimes even Judge Skeen -- obviously, he can do that --  
18 will ask you some questions possibly.

19 We've all been over your questionnaire. We  
20 had those provided in advance, and so we're going to talk  
21 about that a little bit. When you came in last week with  
22 202 other citizens of Smith County, you probably didn't  
23 know, really, what you were there on at first; is that  
24 right?

25 A. No. Huh-uh.

1 Q. And as we went through, I think at some point you  
2 began to realize this probably was a pretty serious case.

3 A. Uh-huh.

4 Q. And then Judge Skeen told you that it was a state  
5 case where the State had filed a notice of intent to seek  
6 the death penalty. At that point, what went through your  
7 mind?

8 A. Truthfully?

9 Q. Yeah.

10 A. I was ready to go home.

11 Q. Ready to go home. Yeah, I know it was a long  
12 afternoon anyway. And, actually, Judge Skeen does it a lot  
13 quicker than some other judges do, you know, so it's a long  
14 process. It's a lot to cover, obviously, because of how  
15 important the case is.

16 If this was just a murder case -- and I say  
17 "just a murder case," because the range of punishment on a  
18 murder case is, obviously, in the penitentiary. In some  
19 cases, five years -- well, in all cases, it's five years in  
20 the penitentiary up to ninety-nine years or life. So  
21 there's a wide range.

22 In a capital murder case, there are only two  
23 options. If the defendant is found guilty of capital murder  
24 and the State is seeking the death penalty, that's life or  
25 death.

1                   So the procedure has to be different, and  
2                   there are certain requirements placed upon the Judge  
3                   pursuant to the law, and there are requirements on us and on  
4                   the Defense. There are requirements on people who are  
5                   qualified to sit as jurors in these type of cases,  
6                   obviously.

7                   Would you agree that Mr. Beatty in this case  
8                   is entitled to an absolute, 100 percent, unequivocally fair  
9                   trial?

10                  A. Yes. Everybody would be.

11                  Q. Right. And a lot of people, you know, when you  
12                  think of the criminal justice system, tend to focus on the  
13                  person who is charged with the crime as the one who has the  
14                  rights, but we do, too.

15                  A. Uh-huh.

16                  Q. The State of Texas, which is represented in this  
17                  county by myself and the people that work in my office,  
18                  Mr. Harrison, who is my first assistant, April Sikes, who is  
19                  chief felony prosecutor, we're also entitled to a fair  
20                  trial. Would you agree with that?

21                  A. Uh-huh.

22                  Q. Okay. I know the Court's going to tell you, but  
23                  you have to answer yes or no because Mrs. Christopher is  
24                  taking it down on the --

25                  A. Yes.

1 THE COURT: I'm sorry, ma'am. I should have  
2 mentioned that to you. That's just so our court reporter  
3 can get down everything you say.

4 VENIREPERSON NORMAN: Okay.

5 THE COURT: I'm sorry.

6 Q. (By Mr. Bingham) And rightfully so, people focus a  
7 lot on the defendant as the ones that -- you know, they tend  
8 to focus on we have to be able to be a hundred percent fair  
9 and then kind of look at us as maybe an institution that,  
10 you know, if they get it, they get it; if they don't, they  
11 don't.

12 We, too, are entitled to a fair trial. So  
13 you said you would agree with that, right?

14 A. Yes.

15 Q. In going through your card, obviously, there's  
16 probably -- your card -- in this case, it's a questionnaire.  
17 There is one thing that's going to probably pop out at us as  
18 on the State side as being a red flag in a death penalty  
19 case. What part of your questionnaire do you think that is?

20 A. When I answered that, I would agree to it.

21 Q. Right. And the part that you said -- and let me  
22 tell you something early on in this situation. You hear  
23 terms -- out in, I guess, the sane world, outside the  
24 courthouse, you hear terms like "bias" and "prejudice," and  
25 to me, if I'm outside the courthouse, they have negative

1 connotations. They seem to infer hate, an unwarranted  
2 dislike, not a fair person.

3 Do you agree with that, that those terms have  
4 a negative connotation in the normal community?

5 A. In some ways, yes.

6 Q. Inside the courtroom, terms like "bias,"  
7 "prejudice" have a legal meaning. That means that for some  
8 reason, that person, in your case, you, because you're here  
9 right now, or a juror or a witness or anybody that's  
10 involved in the criminal justice system for some reason  
11 doesn't agree with something, okay?

12 It's not negative because, as a citizen, you  
13 don't have to agree with the law. You just have to be able  
14 to follow the law.

15 Now, with that said, when the death penalty  
16 is on the table, there's a judge here that says it like  
17 this, "A death penalty case death is different." A death  
18 penalty case is different, in that most people have varied  
19 decided issues. They know how they feel on that issue.

20 Some people come in and say, "You know, let's  
21 string them up on the square. Let's do it. We don't have a  
22 problem with the death penalty." Other people -- and that's  
23 not good. I mean, you don't want to say, "Heck, yeah, the  
24 death penalty all the time." That's not right.

25 Some people come in and go, "Look, I don't

1 agree with it. I think we ought to have life without  
2 parole," which we don't have in the State of Texas, okay?  
3 Everybody in the State of Texas is parole eligible at some  
4 point. In a life case in a capital murder, it's 40 years,  
5 okay?

6 Some people come in and say, "I think there  
7 are better options. I don't believe in the death penalty.  
8 I don't believe in the Government being able to seek the  
9 death penalty," or -- "and I don't believe as a juror that I  
10 could sit in judgment of someone and ultimately render a  
11 verdict that results in the death penalty."

12 People have varying -- there's not a whole  
13 lot of gray area with people on that issue.

14 A. Uh-huh.

15 Q. And some people come in and can say what the law  
16 requires, you know, that "I could assess it under the proper  
17 type of case."

18 I see yours -- what you checked there was, "I  
19 can never, under any circumstances, regardless of the law or  
20 facts, return a verdict regardless of the death penalty  
21 being assessed."

22 You still feel that way?

23 A. Yes.

24 Q. Now, the thing is -- I mean, obviously, you know  
25 that we filed a notice of intent seeking the death penalty.

1 There is nothing wrong with the way a person feels as long  
2 as they're being truthful at this process. It's very, very  
3 important to us, see, and to Mr. Beatty -- just as if I had  
4 somebody saying, "You know what? I believe in the death  
5 penalty all the time."

6 Well, that would not be fair to Mr. Beatty.  
7 He's entitled to have a witness -- it says "witness" right  
8 there, and I keep looking at it -- a juror who can look at  
9 the evidence and make that decision, not just automatically  
10 say, "I'm going to give it to you," just like we're entitled  
11 to have a witness (sic) that says, "You know, under the  
12 appropriate facts, I could assess the death penalty."

13 Many people fall in your category. "I don't  
14 agree with it, and regardless of what the facts are or what  
15 the law says, I could not assess the death penalty because  
16 of my personal convictions, my personal beliefs."

17 That's where you fall, isn't it?

18 A. Correct.

19 Q. Let's talk a little bit about the term that I was  
20 talking about, the biases and prejudices, because I want you  
21 to keep in mind, when we talk about those terms here, try to  
22 remember those in the context of the criminal justice  
23 system.

24 "I disagree with the law to the extent that I  
25 can't take an oath." Because you'll take a lot of oaths



1 during this. You've taken one already to answer the  
2 questions truthfully, which you've done, and we appreciate  
3 it.

4                   You'll take another oath before you -- if you  
5 were selected, before you sat on the jury, that you will  
6 fairly and accurately render a verdict in this case, that  
7 you will follow the law in the case. And some people can't  
8 take that verdict (sic) in this type of case. A lot of  
9 people -- let me -- I mean, take that oath in this type of  
10 case.

11                   A lot of people say, "You know, bring me in  
12 here on a dope case; bring me in here on a murder case;  
13 bring me in here on a sexual assault case; but I'm going to  
14 have a problem with the death penalty."

15                   Is that how you feel?

16           A.     Uh-huh.

17           Q.     You've got to answer yes or no.

18           A.     Sorry. Yes.

19           Q.     Let's talk a little bit about these "bias" and  
20 "prejudice" words. There's -- one of the things -- the law  
21 has certain ways that you have to -- certain inquiries you  
22 have to make, and I want to talk to you a little bit about  
23 that.

24                   One of the areas of the law -- because one  
25 thing I have to do is tell you what the law is, okay, so

1 you're fully informed of how this works. Then you get to  
2 tell me how you truly feel, and then we see where that  
3 places you in this process.

4 Judge Kent is a judge you've probably  
5 heard -- you've heard of Judge Kent?

6 A. Uh-huh. Yes.

7 Q. She's been a judge here a long time, and she says,  
8 you know -- she often tells the jurors, look, there is no  
9 thought police. No one is going to bust in here and go, you  
10 know, we're putting you in jail for not agreeing with the  
11 death penalty.

12 That's your entitlement as a citizen of this  
13 county and of this state and of the United States. You  
14 know, you don't have to agree with the law. This isn't  
15 Russia.

16 So what I want to do is talk to you a little  
17 bit about it so you're informed, not that -- you know, I'm  
18 not trying to change your mind; I'm trying to see how you  
19 feel.

20 Is the death penalty, the issue surrounding  
21 the death penalty, something that you've considered at  
22 various times in your life, thought about it?

23 A. Not where I would have to be giving a verdict on  
24 it, no.

25 Q. No. I understand.

1                   Would something you thought -- maybe a TV or  
2 news article --

3           A.     Just to the fact that I knew I couldn't  
4 intentionally give a verdict that someone would be put to  
5 death.

6           Q.     Okay. And let me say this to you: It's kind  
7 of -- there's two sides to it. If you were sitting in a  
8 case, let's say, an aggravated sexual assault case, range of  
9 punishment was five years to ninety-nine years or life -- if  
10 the person was convicted, you would actually assess -- and  
11 he went to the jury -- the defendant has a choice in a  
12 noncapital case where he goes to the judge or the jury for  
13 punishment.

14                   But let's say he goes to the jury. You would  
15 actually listen to the evidence, guilt/innocence and  
16 punishment, and render your verdict. "I think he deserves  
17 40 years, 50 years, whatever."

18                   In a capital murder case where the defendant  
19 has been found guilty and the State has filed a notice of  
20 intention to seek the death penalty, there are those two  
21 verdicts: Life or death.

22                   And you don't, at any time, pick either one.  
23 In other words, you won't get a verdict with a big box that  
24 says, "You know, life or death, please check one," okay?  
25 It's not like that.

1                   There are -- in this case, there would be two  
2 special issues, okay? And you have those in front of you, I  
3 think. You probably have three listed, but Number 2 won't  
4 apply, so 1 and 3 would be the ones applicable.

5                   And if you look at the first one, you see  
6 where it talks about the -- and I'm trying to get to my  
7 copies. As many times as I've read them, I would think I  
8 could quote them.

9                   Do you see where it says, "Is there a  
10 probability that the defendant, Tracy Lane" -- it says  
11 "Beat," but it should be "Beatty" -- would commit criminal  
12 acts of violence that would constitute a continuing threat  
13 to society?"

14                   Do you see that?

15           A.     Yes.

16           Q.     What these are, are special issues that tend to  
17 narrow those people that are going to get the death penalty.

18                   MR. HARRISON: Judge, may we approach the  
19 bench briefly?

20                   THE COURT: Yes.

21                   (At the bench, on the record.)

22                   MR. HARRISON: Judge, we had thought and have  
23 thought that the special issues in general are taped up  
24 there where the venireperson sits.

25                   MR. BINGHAM: We didn't put anything up

1 there.

2 THE COURT: Are the special issues up there?

3 MR. BINGHAM: I don't know. They should be.  
4 I didn't place them up there.

5 MR. PERKINS: Could we have her step out in  
6 the hall? And I'll tell you why, and it may not be anything  
7 at all.

8 MR. HAWK: If you would have her step out.

9 (End of bench conference.)

10 THE COURT: Ma'am, could you step out just a  
11 moment, please?

12 (Venireperson Norman leaves the courtroom.)

13 MR. PERKINS: Here's what Mr. Bingham said.  
14 "There should be some special issues up there. It says  
15 'Tracy Lane Beat'; it should say 'Beatty.'" And I thought  
16 that they had actually put something up there with his name,  
17 for this defendant, and that, obviously, is objectionable.

18 THE COURT: Okay. So what's over there?

19 MR. PERKINS: Just the general special -- it  
20 just kind of gave me kind of a slight heart attack.

21 THE COURT: You thought his name was typed in  
22 to the issue?

23 MR. HAWK: Well, Mr. Bingham made me believe  
24 that, so we wanted to stop this.

25 MR. BINGHAM: This is our copy, but this was

1 handed to me. I was just reading along. I just read that.

2 THE COURT: Oh, you've got a verdict form.

3 MR. BINGHAM: I have a special issue, and I  
4 just read it, and I know we hadn't placed anything up there.

5 THE COURT: I understand.

6 MR. PERKINS: That's cool.

7 THE COURT: So just for the record, what is  
8 over there are the three special issues, which should be  
9 over there in front of each juror -- venireperson.

10 MR. BINGHAM: We ought to just take a copy of  
11 that and mark it and make it part of the record.

12 THE COURT: Let's just do that right now.  
13 Y'all have a copy of it?

14 MR. BINGHAM: Well, what we could do is we'll  
15 run up and make a copy of it after the next juror, and then  
16 we'll mark one.

17 MR. HAWK: We can do that at the break. No  
18 problem.

19 THE COURT: Are those your pages over there,  
20 Mr. Hawk?

21 MR. HAWK: We actually have the same thing.  
22 We just don't have 2. We have two separate sheets.

23 THE COURT: Okay.

24 MR. HAWK: Special Issue Number 1 and Special  
25 Issue 2, but it's the exact same thing. We didn't put any

1 name in there at all.

2 MR. HARRISON: Judge, I think the special  
3 issue that is taped to the witness stand, that was placed  
4 there by the Court or the Court's staff.

5 We didn't have anything to do -- the State  
6 had nothing to do with placing that there. The only other  
7 copies that have been given to the jurors came from the  
8 Defense. We have not provided any of the jurors anything.

9 THE COURT: Well, what is taped up there is  
10 correct.

11 MR. HAWK: That's how I believe it to be.

12 THE COURT: And you just looked at it to make  
13 sure.

14 MR. HAWK: I did.

15 THE COURT: I thought it was correct.

16 MR. PERKINS: We were just concerned that his  
17 name may have been in there.

18 THE COURT: Now I understand. Mr. Bingham is  
19 just reading out of the verdict form.

20 MR. HAWK: Right.

21 MR. PERKINS: Right. But he actually said,  
22 "You should have a form up there and read along with me."  
23 He read Mr. Beatty's name. That can't be, Judge, and it  
24 turns out that it's not.

25 MR. BINGHAM: No.

1 THE COURT: All right. Ready for the  
2 venireperson?

3 Just ask her to step back in.

4 (Venireperson Norman enters the courtroom.)

5 THE COURT: Ma'am, I apologize for the  
6 interruption. That was just a matter that the Court had to  
7 clear up. Thank you very much.

8 Q. (By Mr. Bingham) You didn't do anything. That  
9 didn't have anything to do with anything that you had done.

10 The special issues that you've got up there,  
11 those are -- those are the law's way of narrowing who will  
12 get the death penalty, okay? Based on how those are  
13 answered, either a life sentence would be imposed or a death  
14 sentence would be imposed.

15 If you answered -- the jury answered yes to 1  
16 and no to Number 3, the death penalty would be imposed. So  
17 y'all don't actually say "life" or "death"; however, you  
18 know by the way you answer those -- because the Court's  
19 going to tell you that if you answer them this way, this  
20 way, and this way, the death penalty will be imposed.

21 So when you're back there deliberating, you  
22 will know by your answers what the Court's going to do  
23 before you come out, okay? But you don't actually check a  
24 box. The law doesn't want to impose on you the burden of  
25 saying "life" or "death." But the way you answer it, you'll



1 know what the results will be.

2 Does that make any difference to you, or is  
3 it pretty much the same views, "I couldn't participate in a  
4 process where the death penalty is a possibility"?

5 A. If there was a likelihood that my -- the way I  
6 voted was going to cause the death penalty, I would have a  
7 problem with that.

8 Q. Okay. Now, a lot of times, people will ask the  
9 question -- let me start off with here, and we'll keep  
10 talking a little bit about it, because I want you to know  
11 that for you to come in here and say how you really feel,  
12 this is a very personal -- can be a personal thing to  
13 people. It's not criticized by anybody.

14 The only thing that can be a problem is when  
15 people come in here and they don't tell the truth, and then  
16 that can be a problem for everybody, because this process  
17 only works if we know how people really feel. Otherwise, it  
18 doesn't work, and you really are not -- justice is not  
19 achieved, which is really what everybody wants.

20 If I said to you take into account what the  
21 terms "bias" and "prejudice" mean to you, disagree with and  
22 can't follow the law, would it be fair to say that you have  
23 a bias or prejudice against any phase of the law upon which  
24 the State is entitled to rely for a conviction or  
25 punishment?

1 MR. HAWK: Judge, I'll have to go ahead and  
2 object at this time. The proper predicate hadn't been laid  
3 for the proper answer to that question. That's the only  
4 objection.

5 MR. BINGHAM: Judge, I disagree with that.

6 THE COURT: Well, just go ahead and restate  
7 your question, Mr. Bingham.

8 Q. (By Mr. Bingham) Well, dealing with the death  
9 penalty, do you understand that if the evidence -- let me  
10 even back up.

11 You understand in a criminal proceeding that  
12 your verdicts are based on the evidence that you hear,  
13 correct?

14 A. Yes.

15 Q. And in looking at your Number 3, you said, "I  
16 could never, under any circumstances, regardless of the law  
17 or facts, return a verdict which resulted in the death  
18 penalty being assessed," right?

19 A. Yes.

20 Q. And you still agree with that?

21 A. Yes.

22 Q. Knowing that the -- that your verdicts in a case  
23 have to be based on the evidence, isn't it true that even if  
24 the evidence suggested that you should answer these special  
25 issues in such a way that it would result in the death

1 penalty being assessed; in other words, you heard the  
2 evidence and you said, "You know what; I believe the  
3 evidence beyond a reasonable doubt should be answered in  
4 such a way that the death penalty would be imposed," you  
5 couldn't do that; is that correct?

6 A. That would be correct, yeah.

7 Q. Okay. Let me kind of back up even more than that.  
8 The first special issue says, "Is there a probability  
9 that" -- we're going to spend quite a bit of time on these  
10 special issues.

11 Are you comfortable?

12 A. Okay.

13 Q. We're going to be here a little bit.

14 Okay. The first special issue says, "Is  
15 there a probability that the defendant would commit criminal  
16 acts of violence that would constitute a continuing threat  
17 to society?"

18 The thing that's important to note about that  
19 is you have convicted someone of capital murder, so you're  
20 now in the punishment stage of trial considering whether it  
21 should be life or death.

22 You never answer these special issues in such  
23 a way that the death penalty -- I mean -- excuse me -- in  
24 such a way -- just like answer yes to that just because he's  
25 been convicted of capital murder. You always look at the

1 evidence.

2 A. Yes.

3 Q. You follow me?

4 A. Yes.

5 Q. The term "probability" means -- is different than  
6 possibility. Have you ever made the lottery? Have you ever  
7 bought a lottery card?

8 A. A few times.

9 Q. A few times.

10 Do you think when you buy the lottery card  
11 that it's probable you're going to win or possible?

12 A. Possible, yes.

13 Q. Right. You see the distinction between the two?  
14 It's a --

15 A. Yes.

16 Q. -- possibility, but maybe not that likely.

17 We actually have to prove probability, okay,  
18 which is more likely than possibility, that the defendant  
19 would commit criminal acts of violence that would constitute  
20 a continuing threat to society.

21 Now, criminal acts of violence could be any  
22 criminal act that is violent, okay? It doesn't have to be  
23 another murder or capital murder that would constitute a  
24 continuing threat to society.

25 And that means the society that -- or let me

1 ask you this: Do you consider the society to be -- I  
2 actually think there is a legal definition of society, but I  
3 don't have that case at hand right now. But do you believe  
4 society to include the society that you live in in the free  
5 world, like the society here in Smith County?

6 A. Yes.

7 Q. Do you think that people down in the penitentiary  
8 can constitute a society?

9 A. In a way, yes.

10 Q. I mean, there are guards down there, doctors, you  
11 know, and those people are entitled to have someone down  
12 there that won't hurt them, too.

13 A. Yes.

14 Q. Now, my question is, if -- if you knew that -- and  
15 the burden of proof, of proving that there's a probability  
16 that -- I can't use Mr. Beatty's name, because we can't talk  
17 about the facts of this case, but a hypothetical defendant  
18 would commit criminal acts that would constitute a  
19 continuing threat to society, the burden of proving that is  
20 on us beyond a reasonable doubt.

21 Let me give you a choice. And if we prove  
22 that to a jury beyond a reasonable doubt, they would need to  
23 answer that yes if we proved it to them beyond a reasonable  
24 doubt. If they answered yes, that defendant is now one step  
25 closer to the death penalty, okay?

1                   Do you believe that if you were deliberating  
2 on the verdict, that if the evidence showed you beyond a  
3 reasonable doubt that you should answer that special issue  
4 yes based on the evidence, would you be able to do that,  
5 knowing it would put him one step closer to the death  
6 penalty, or would you have to abstain from even answering  
7 that question? Could you do it?

8           A.    I would have to -- yeah.

9           Q.    What would you do?

10          A.    I would have to truthfully answer whether I  
11 thought he would probably commit an additional crime in the  
12 future.

13          Q.    Okay. Now, would you -- and we're going to talk  
14 about the burden of proof of beyond all reasonable doubt.  
15 Beyond a reasonable doubt talks about -- that's the burden  
16 of proof that I have in proving someone guilty and proving  
17 that first special issue, okay? I have to -- beyond a  
18 reasonable doubt doesn't have a definition. What I have to  
19 do is extinguish all reasonable doubt in your mind.

20                   What the law does tell you and what the Judge  
21 will tell you is that it's not a hundred percent doubt.  
22 It's not -- in other words, I don't have to prove something  
23 to you a hundred percent. I don't have to prove it to you  
24 beyond all doubt, okay? And I don't have to prove it to you  
25 beyond a shadow of a doubt, because that's a Hollywood term,

1 not a legal term.

2 Now, beyond a reasonable doubt is whatever it  
3 is to you, okay? You'll decide what is a reasonable doubt  
4 and what isn't and whether I have excluded all reasonable  
5 doubt in your mind, okay? But one thing the law will tell  
6 you is, it's not a hundred percent doubt or beyond all  
7 doubt.

8 My question to you is, because of the serious  
9 nature of this crime and because of the fact that you would  
10 be making considerations on whether or not you should answer  
11 these special issues in such a way that the death penalty  
12 could be imposed, would you require us to prove that to you  
13 a hundred percent, that there is a probability that he would  
14 commit criminal acts of violence that would constitute a  
15 continuing threat to society, before you could answer it?

16 A. I would want enough evidence, yes.

17 Q. Okay. And would that evidence have to prove it to  
18 you a hundred percent before -- I mean, would you want to  
19 know a hundred percent, to answer that question, before you  
20 answered it in such a way that the death penalty could  
21 possibly be imposed?

22 A. There is no possible way you could do a hundred  
23 percent.

24 Q. That's correct. And that's my question to you.

25 A. No, not a hundred percent.

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1 Q. Okay. Would you require a standard higher than  
2 that required by law of beyond a reasonable doubt?

3 A. Yes.

4 Q. Would you require us to prove it to you beyond all  
5 doubt?

6 A. I'm not sure about that.

7 Q. Would you require us -- our proof to be higher  
8 than that which would exclude all reasonable doubt? You  
9 would want to know -- require us to prove it to you beyond  
10 the exclusion of all reasonable doubt?

11 A. Yes.

12 Q. If the standard of the law is beyond a reasonable  
13 doubt, you would require us to prove it to you at a standard  
14 higher than that required by law?

15 A. Yes.

16 Q. Do you believe, as you sit here today, that there  
17 is a possibility that if you got back there, you might  
18 require us to prove it to you a hundred percent?

19 A. I don't think so.

20 Q. Okay. Let's talk about Special Issue Number --  
21 it's really Number 3, but it'd be the second one that you  
22 saw, okay?

23 It says, "Taking into consideration" -- go  
24 ahead and read that to yourself.

25 A. (Complies.)



1 Q. Okay. What that's saying is -- this is kind of a  
2 safeguard. In other words, this is the last special issue.  
3 If you've gotten here, you've convicted the defendant of  
4 capital murder, and you have found that he -- the answer to  
5 that first special issue of him being a future danger is  
6 yes.

7 So if you answer no here, the death penalty  
8 is going to be assessed, okay? This is the last thing you  
9 have to consider. If you answer no, we're going to come  
10 back in here, and the Court's going to say, "The Court is  
11 sentencing you to death."

12 Now, as you sit here right now, I can see  
13 your facial expression kind of changes a little bit on that.  
14 What do you think about when you think about walking back  
15 and sitting in that jury box with 11 other jurors, listening  
16 to the Court say, "The Court, based on the verdict, based on  
17 the special issues, imposes on you the sentence of death"?

18 A. I don't like it.

19 Q. Yeah. It runs against your personal views?

20 A. Right.

21 Q. Okay. Special Issue Number 3 is the last hurdle.  
22 There are really three hurdles in this case because we're  
23 only using two of the special issues. Number 3 won't  
24 apply -- I mean, the second one in front of you won't apply  
25 in our fact scenario. If the State gets over Hurdle 3 and

1 you answer no, then he's going to get the death penalty.

2 Now, there is no burden of proof on this  
3 special issue at all. We don't have to prove that there is  
4 a mitigating circumstance; neither does the Defense. But  
5 let's go over this special issue a little bit.

6 It says, "Taking into consideration all the  
7 evidence, including the circumstances of the offense, the  
8 defendant's character and background, and the personal moral  
9 culpability of defendant, is there sufficient mitigating  
10 circumstance or circumstances to warrant that a sentence of  
11 life in prison rather than the death sentence be imposed?"

12 That means, really, mitigate -- number one,  
13 it has to be a mitigating circumstance that is sufficient to  
14 warrant life over death, okay?

15 Now, what is mitigating? A mitigating  
16 circumstance could be anything it is to you. I mean,  
17 anything in the evidence you've heard that you say, "You  
18 know what? I think that was sufficiently mitigating to  
19 warrant life over death." It could be something in the  
20 defendant's background.

21 Can you think of things -- well, maybe after  
22 this. It can be anything you think it is, okay? You could  
23 just say, "I think that's sufficiently mitigating to warrant  
24 life over death," and, bam, it just is, okay?

25 Now, you know that if you answer this special

1 issue -- you look at all the evidence, you answer that  
2 special issue no, you're coming out there, and the death  
3 sentence is fixing to be imposed.

4 Would you always find in every case something  
5 sufficiently mitigating to warrant life over death?

6 A. Yes.

7 Q. Now, that is not an unfair answer because it's the  
8 way you feel. You see what I'm saying?

9 Is it fair to say that before you go into a  
10 case -- and by you answering yes, you understand that that's  
11 not what the law says, but that's how you feel?

12 A. Uh-huh.

13 Q. You have to have to answer yes or no.

14 A. Yes.

15 Q. Because the point being is, you always -- in your  
16 views, you always pick life, right?

17 A. Right.

18 Q. And because you always pick life, regardless of  
19 what the evidence was in a particular case, regardless of  
20 what the guilt/innocence evidence showed, regardless of what  
21 the punishment evidence showed, regardless of considering  
22 all of the; evidence, the circumstance of the offense, the  
23 defendant's character and background, the personal moral  
24 culpability of the defendant, you will always find something  
25 sufficiently mitigating to warrant life over death in order

1 to ensure that a life sentence would be imposed, right?

2 A. That would be a true fact, yes.

3 Q. I'm sorry. I can't hear you. I'm under this fan.

4 A. Yes.

5 Q. Yes. Okay.

6 Now, let me talk a little bit about -- and  
7 you realize, on that special issue, there is no burden of  
8 proving anything. Like I told you, I don't have to prove  
9 anything; the Defense doesn't have to prove anything.  
10 Either it's there or it isn't.

11 You understand that, right?

12 A. Right. Uh-huh.

13 Q. So let's talk about this a little bit more, this  
14 third special issue. You understand that just how you've  
15 answered, and there's nothing wrong with it, okay, that that  
16 is contrary to the law?

17 A. Yes.

18 Q. And you understand that -- now, let me ask you  
19 this question: Do you think you understand how the law  
20 applies to those special issues and the effect of how you  
21 vote on those?

22 A. Yes.

23 Q. Let me ask you this question then: Let's take  
24 into account the third special issue. You believe, based on  
25 your views, that you would always pick life, right?

1 A. Yes.

2 Q. Do you believe, then, you would have a bias or a  
3 prejudice against any phase of the law in which the State is  
4 entitled to rely for conviction or punishment?

5 A. Restate that.

6 Q. Sure. Do you believe -- you don't agree with the  
7 death penalty, right?

8 A. Right.

9 Q. And you would always find something sufficiently  
10 mitigating in order for a life sentence to be imposed?

11 A. Yes.

12 Q. Now, would you agree, then, that because you would  
13 always find something sufficiently mitigating, regardless of  
14 what the evidence showed, that you have a bias or prejudice  
15 against any phase of the law in which the State is entitled  
16 to rely for conviction of punishment, including the third  
17 special issue?

18 A. Yes.

19 Q. Would you -- and let's talk a little bit about the  
20 death penalty. The Court would tell you that -- I believe,  
21 in just talking to you, that -- and this may not be any of  
22 my business -- none of my business, any of my business --  
23 that you strive -- you're someone that is going to want to  
24 be honest?

25 A. Yes.

1 Q. That you want to do the right thing, and you want  
2 to do what you believe is right?

3 A. Yes.

4 Q. And you know that in this process, that you  
5 probably know already that some of the answers you've given  
6 disqualify you as a juror, possibly, in a death penalty  
7 case, fair?

8 A. Yes.

9 Q. If you took an oath, you would want to know that  
10 you could do what you're taking an oath to do, right?

11 A. Yes.

12 Q. I mean, otherwise, no one wants to take an oath  
13 and say, "I solemnly swear or affirm that I will true  
14 answers -- that I will base my verdict on the evidence," so  
15 on and so forth, "that I will listen attentively to the  
16 evidence," take an oath as a juror to do something you can't  
17 do, right?

18 A. Right.

19 Q. In this case, can you take an oath that you will  
20 be fair or that you will base your verdict -- let me back up  
21 because that's going to be a confusing question.

22 What I heard you say in what is the third  
23 special issue in front of you is that regardless of all the  
24 evidence, the circumstances of the offense, the defendant's  
25 character and background, his personal moral culpability,

1 that you're always going to find something sufficiently  
2 mitigating, regardless of what the evidence shows, to  
3 warrant life over death, correct?

4 A. Correct.

5 Q. So it's fair to say you could not take an oath  
6 that you would answer that verdict -- these verdict forms  
7 based on the evidence -- what you believe the evidence  
8 showed because, regardless of the evidence, you would always  
9 answer that third special issue yes?

10 A. Yes.

11 Q. Okay. And you understand my questions?

12 A. Yes.

13 Q. Now, let me ask it in that way. Because you would  
14 always answer the third special issue based on the fact that  
15 you want a life sentence to be imposed instead of the  
16 evidence, would you also agree then -- I might have asked  
17 you this already -- but that you have a bias or prejudice  
18 against any phase of the law upon which the State is  
19 entitled to rely for conviction of punishment because you  
20 will always answer that third special issue yes?

21 A. Right.

22 Q. And because of that, let's talk a little bit about  
23 the oath. The oath is given to you by the Court as you're  
24 seated in the jury box with 12 (sic) other jurors to ensure  
25 that the process that you're about to participate in, that

1 you're able to do it pursuant to the law and honestly -- and  
2 that you understand your duties.

3 You know, the oath says, "Do you solemnly  
4 swear or affirm" -- I don't have the oath memorized, but is  
5 to ensure that this step goes -- that this trial goes  
6 100 percent fair to the defendant and to the State.

7 Do you believe your views on the death  
8 penalty would prevent or substantially impair the  
9 performance of your duties as a juror in accordance with the  
10 instructions that you would receive from the Court and the  
11 oath that you would be required to take?

12 A. From what you said, yes.

13 Q. Okay. Now, let's talk a little bit more about --  
14 about the death penalty and --

15 MR. BINGHAM: Can I have one moment, Judge?

16 THE COURT: Yes, sir.

17 Q. (By Mr. Bingham) The -- I guess I could sit here  
18 and talk to you for quite a while. Do you -- the views you  
19 have on the death penalty, would you consider those to be  
20 strong views?

21 A. For me, yes.

22 Q. For you. In other words, I can sit here all day,  
23 and you're not going to say, "You know what; you've  
24 convinced me that I could assess the death penalty if the  
25 evidence showed it"?



1 A. No.

2 Q. No. Okay. I don't believe myself to be that  
3 persuasive. I mean, pretty much, what you're saying is,  
4 "I'm always going to find a way to assess a life sentence"?

5 A. Correct.

6 Q. And if it came down to it, regardless of -- even  
7 if you thought that the evidence suggested that a special  
8 issue should be answered a certain way, you're always going  
9 to answer the third special issue such that a life sentence  
10 is imposed?

11 A. Right.

12 Q. Even if -- even if there was no -- or let me ask  
13 it this way: Even if you felt like there was not something  
14 sufficiently mitigating, you would always find something;  
15 you would always answer that question yes?

16 A. Yes.

17 Q. Thank you.

18 MR. BINGHAM: Judge, we'll pass the witness  
19 on that limited pass.

20 THE COURT: Okay. Mr. Hawk?

21 MR. HAWK: No questions at this time, Judge.

22 THE COURT: All right. Thank you, Mr. Hawk.

23 MR. HAWK: On the limited pass, we don't have  
24 any questions on that.

25 MR. BINGHAM: We don't have any further

1 questions, Judge.

2 THE COURT: Oh, you don't have any further  
3 questions then?

4 MR. BINGHAM: No.

5 THE WITNESS: So you're passing the  
6 venireperson --

7 MR. BINGHAM: Passing for all purposes.

8 THE COURT: -- over to the Defense?

9 Full pass to you, Mr. Hawk.

10 MR. HAWK: No questions, ma'am.

11 THE COURT: Thank you, ma'am. Could you step  
12 outside just a moment, please? And Carleton will show you  
13 where you can wait just a moment, please.

14 (Venireperson Norman leaves the courtroom.)

15 THE COURT: Go ahead, Mr. Bingham.

16 MR. BINGHAM: Judge, we would challenge this  
17 juror for cause. I don't remember all the -- everything she  
18 answered, but I think it's clear that she said she cannot  
19 take an oath or instructions imposed by the Court.

20 Specifically, she said that her views on the  
21 death penalty would prevent her substantially and impair the  
22 performance of her duties as a juror in accordance with the  
23 instructions given by the Court and the oath she would be  
24 required to take, which is a disqualification under  
25 Wainwright versus Witt, 469 United States Code 412.

1                   Additionally, she indicated that she has a  
2 bias or a prejudice, which substantially impairs the ability  
3 to carry out her oath, like I just said, also under Patrick  
4 versus State, 906 Southwest 2nd 481.

5                   But even more specifically, under 35.16,  
6 which the Court, I know, has in front of it, under  
7 Section (b) (3) that she has a bias or prejudice against any  
8 phase of the law for which the State is entitled to rely for  
9 conviction for punishment.

10                  And I think it's clear -- and under Special  
11 Issue Number 3, which would be the second one we believe  
12 would be submitted in this case, is that she's always going  
13 to pick life. Regardless of what the evidence shows in this  
14 case, she is always going to find a sufficiently mitigating  
15 circumstance to warrant life over death, regardless of the  
16 evidence.

17                  She is clearly a juror that is challengeable  
18 for cause. She also believed that she would create  
19 mitigation even if she did not believe there was any.  
20 Obviously, that would be very concerning to the State.

21                  So we would make a challenge for cause on  
22 those grounds.

23                  THE COURT: Mr. Hawk?

24                  MR. HAWK: We don't resist, Judge.

25                  THE COURT: The State's challenge for cause

1 as to Venireperson Patricia Norman is granted.

2 Would you ask Ms. Norman to step back in?

3 (Venireperson Norman enters the courtroom.)

4 THE COURT: Ms. Norman, we are going to be  
5 able to excuse you from any further jury service in this  
6 case. I deeply appreciate your time from last Thursday and  
7 all your time down here answering questions today.

8 You're finally excused, meaning that you  
9 don't have any more jury service involved in this case.  
10 Thank you very much for your attendance here today and last  
11 Thursday. Thank you. You may be excused, ma'am. Thank you  
12 very much.

13 (Venireperson Norman leaves the courtroom.)

14 THE COURT: Would you get Mr. Pearson?

15 (Venireperson Pearson enters the courtroom.)

16 THE COURT: Good morning, Mr. Pearson. Just  
17 come on around this way and have an end chair there, please,  
18 sir.

19 Mr. Pearson, how are you this afternoon?

20 VENIREPERSON PEARSON: Fine.

21 THE COURT: We appreciate you being down  
22 here, I know as a result of a scheduling, but we appreciate  
23 you being here. This is that process we talked about  
24 Thursday where an individual questioning is going to take  
25 place.

1                   One of the -- Mr. Harrison, assistant  
2 criminal district attorney here in Smith County, is going to  
3 be asking you some questions, asking you if you can follow  
4 certain type laws that apply in this type case, asking you  
5 some questions about your views on certain issues. And then  
6 Mr. Perkins or Mr. Hawk will do the same for the Defense.

7                   Two or three things to keep in mind. Number  
8 one, the oath that you took Thursday still applies today, so  
9 you're still under oath.

10                  Also, when you answer a question, if you  
11 would, like, answer out rather than -- if the answer is yes,  
12 rather than nodding your head, just answer out yes or answer  
13 no or whatever the answer is. But answer out rather than a  
14 shake of the head because my court reporter can't take down  
15 shakes of the head.

16                  VENIREPERSON PEARSON: Okay.

17                  THE COURT: Also, there are not any right or  
18 wrong answers. Whatever question you (sic) ask, the purpose  
19 of the question is just try to determine truthfully how you  
20 feel about it personally. No right or wrong answers  
21 whatsoever.

22                  And then have you thought of anything since  
23 Thursday that you might need to add to your questionnaire  
24 just by telling us about it? Anything gone through your  
25 mind, "Well, I should have put such and such and such down"

1 or anything you want to clarify regarding the questionnaire?

2 VENIREPERSON PEARSON: Okay.

3 THE COURT: Anything?

4 VENIREPERSON PEARSON: No, sir.

5 THE COURT: All right, sir. Well, with that,  
6 Mr. Pearson, Mr. Harrison will proceed then.

7 MR. HARRISON: Thank you, Your Honor.

8 JOHN M. PEARSON,  
9 having been duly sworn as a member of the special venire,  
10 was examined as follows:

11 VOIR DIRE EXAMINATION

12 BY MR. HARRISON:

13 Q. Mr. Harrison -- Mr. Harrison -- Mr. Pearson, good  
14 afternoon. How are you doing?

15 A. I'm doing fine.

16 Q. Great. I'm going to try and speak up. That air  
17 conditioner kicks on and off, and it's hard to hear  
18 sometimes.

19 What I want to do is -- first of all, we  
20 appreciate you coming down. We've been introduced. My name  
21 is Brett Harrison. I'm the first assistant here in Smith  
22 County. To my left is Matt Bingham, the elected criminal  
23 district attorney. And next to him to his left is April  
24 Sikes, our chief felony prosecutor.

25 Next to me on my right is the defendant,

1 who's been charged by the Smith County grand jury with the  
2 offense of capital murder, Tracy Beatty. Next to him is his  
3 lead defense attorney, Robert Perkins, and next to  
4 Mr. Perkins is Ken Hawk, assisting Mr. Perkins with this  
5 trial, both very fine lawyers.

6 Do you think you know any of us at all,  
7 personally acquainted with any of us?

8 A. No.

9 Q. What I want to do is we've had an opportunity to  
10 look at this really extensive book that y'all got to fill  
11 out last Thursday over the lunch hour, and that really helps  
12 you out. It cuts down our voir dire, cuts out a lot of what  
13 we have to question you about.

14 Unfortunately, there are some things that  
15 you've answered that kind of makes us want to ask some  
16 follow-up questions, and that's what I'm kind of going to  
17 start out with.

18 Obviously, last Thursday, you found out from  
19 the Judge that this was a capital murder case where  
20 Mr. Bingham had actually filed notice of his intent to seek  
21 the death penalty in this case on behalf of the District  
22 Attorney's Office.

23 What did you first think about when you first  
24 heard that and realized that that was the type of case here  
25 that you were potentially going to have to be serving on?

1           A.    I knew that something was up like that when  
2 everything started, and I saw all your -- you guys out there  
3 in front. I knew it was going to be something big. And  
4 that was really about all, just waiting to see what happens  
5 next.

6           Q.    Okay. Obviously, there's a significant question  
7 or a couple of questions that you answered on that  
8 questionnaire relating -- and you probably know where I'm  
9 going -- relating to the death penalty and your feelings on  
10 the death penalty.

11                    I want to kind of explore that with you a  
12 little bit. It gives you a little bit of room to kind of  
13 tell us how you feel and breaks it down a little bit. But I  
14 want to kind of go a little bit deeper.

15                    You indicated that with regard to the death  
16 penalty, you generally -- you had three choices: No  
17 opinion, generally favor, generally against. You indicated  
18 generally in favor.

19                    And the next question is kind of a follow-up  
20 question and what you checked was Number 1, "I believe that  
21 the death penalty is appropriate in some cases."

22                    Is that still how you feel?

23           A.    Yes, sir.

24           Q.    Let me ask you, when did -- have you always felt  
25 that way?



1 A. I believe I have, yes, sir.

2 Q. At least long enough that you've been thinking  
3 about it.

4 Have you ever not thought the death penalty  
5 was an appropriate thing to have in the criminal justice  
6 system?

7 A. Sometimes when -- when you read about a case where  
8 the guy -- and it's happened -- has been actually innocent,  
9 and they've been wrongly convicted, I think about that. And  
10 you hope, of course, that's not something I personally would  
11 be involved in.

12 Q. Right.

13 A. But that would be about the only time.

14 Q. Okay. Nothing to the extent -- you don't think  
15 that would -- certainly would be a widespread enough issue  
16 to cause you to, I guess, rethink your position on the death  
17 penalty?

18 A. Oh, no.

19 Q. Okay. If you were the legislature for the day --  
20 legislator for the day, and I gave you the option of keeping  
21 the death penalty as it stands, getting rid of it  
22 completely, or changing it, what would you do?

23 A. I would keep it.

24 Q. Where do you -- where did you kind of start  
25 forming your opinions about the death penalty? And let me

1 stop for a second.

2                   You know, questions I ask, questions the  
3 Defense asks, if we were in any other setting than right  
4 here in this court, it wouldn't be any of our business at  
5 all, and I wouldn't pry, but, obviously, you understand why  
6 we're doing it.

7                   So with that said, what kind of helped you  
8 formulate your opinions in favor of the death penalty?

9           A. I don't really know. You know, something has got  
10 to be done as a deterrent. I'm not sure it works all the  
11 time, but if the crime fits, you know, the price you have to  
12 pay, then so be it.

13           Q. Okay. Do you -- do you think you maybe formed  
14 some of your opinions from family, as far as -- you know,  
15 would your family, mother, father, whoever, be in favor of  
16 the death penalty? Was it just not a topic really --

17           A. No. It really wasn't a topic.

18           Q. Do you have -- do you have any hesitancy at all in  
19 serving on a case that you know is a death penalty eligible  
20 case?

21           A. Well, I support the death penalty. I never  
22 thought I myself would be somebody that would be involved in  
23 it and, of course, wish somebody else could always do it,  
24 but you have to step up to the plate, and somebody has got  
25 to do it.

1 Q. Are you the type of individual who could step up  
2 to the plate and do what needed to be done?

3 A. I think I can.

4 Q. And when I say do what needs to be done, what I  
5 mean is either find someone not guilty, if they're not  
6 guilty, or guilty, if they are guilty at first?

7 A. Sure.

8 Q. And then -- what there are, are special issues in  
9 the punishment phase of the capital murder. You don't, say,  
10 check off a box that says "life" or "death." You answer two  
11 questions. And the way those are answered result in one of  
12 two things: Either a life sentence being imposed or a death  
13 sentence being imposed.

14 Are you the type of person who can listen to  
15 the evidence, look at the facts, and judge each of those  
16 special issues fairly and let the chips fall where they may?

17 A. I would like to think I am.

18 Q. You would have a problem -- if you looked at all  
19 the facts and all the evidence and the way that special  
20 issues should be answered, in answering those, whether that  
21 resulted in a life sentence, you could do that?

22 A. Yes, I could.

23 Q. You could do it if the way you answered those  
24 special issues resulted in a death sentence? You could do  
25 that as well?

1 A. I think I could, yes.

2 Q. Now, when you start talking about "I think I can"  
3 and "probably so," kind of a red flag goes up. Someone in  
4 our office kind of uses an example, if my wife were going on  
5 a business trip and I asked her if she was going to be  
6 faithful to me on this business trip, and she said, "I think  
7 so," she wouldn't be going on that business trip.

8 A. Right.

9 Q. So let me kind of pin you down.

10 A. Okay.

11 Q. I need to know because, obviously, this defendant  
12 is entitled to a fair trial. Absolutely, no question, no  
13 doubt about that, true?

14 A. True.

15 Q. The State of Texas often -- and people know that.  
16 People kind of tend to feel that way automatically going  
17 into a case. The State of Texas also is entitled to a fair  
18 trial. You understand that?

19 A. Yes, sir.

20 Q. Are you the type person that if the special issues  
21 needed to be answered in a way that meant a death sentence  
22 would be imposed, you could do that?

23 A. Yes.

24 Q. Any question at all in your mind about that?

25 A. No.

1 Q. Just in kind of a general sense, do you think the  
2 criminal justice in the State of Texas is fair?

3 A. For the most part, I do.

4 Q. And, obviously, you've even talked about some  
5 examples where you didn't think so, but just as a general  
6 rule, you think it is?

7 A. Yes.

8 Q. Do you think criminals who are found guilty in the  
9 State of Texas are treated fairly, too leniently, or too  
10 harshly just in general? Obviously, it's going to be on a  
11 case-by-case basis.

12 A. Yeah. I would say fairly probably overall. You  
13 know, it's not like I deal with something like this every  
14 day or anything. But as far as what I know, I've seen them  
15 treated fairly.

16 Q. What about the appeals process and specifically in  
17 a capital murder case? You know, people -- oftentimes,  
18 people are upset about the length of delays when a death  
19 sentence is actually imposed. The appeal process just seems  
20 to go on and on and on ad nauseam.

21 How do you feel about that?

22 A. As a taxpayer, I think it goes on too long  
23 sometimes, but, again, it's something probably that has to  
24 be done, and it's something I don't know much about.

25 Q. Are you aware that there are several automatic

1 appeals that the defendant is entitled to on the state and  
2 federal level --

3 A. Yes, sir.

4 Q. -- in a death penalty case when a death penalty is  
5 imposed?

6 A. Yes, sir.

7 Q. Do you think that's a good idea for state courts,  
8 as well as federal courts, to be able to review death  
9 penalty cases where death penalties have been imposed?

10 A. Yes.

11 Q. Kind of a way to limit any kind of mistake that  
12 ever could be made?

13 A. Yes, sir.

14 Q. Does that make you feel better about being able to  
15 sit in a death penalty case?

16 A. Yes.

17 Q. Those checks and balances, those appellate  
18 reviews?

19 A. Uh-huh.

20 Q. So even though it's a lengthy process, you think  
21 it's an appropriate thing to do?

22 A. Yes.

23 Q. Well, Mr. Pearson, let me move on and talk about  
24 some other issues from your jury questionnaire. You had  
25 indicated on one of the questions that you had read or seen

1 or learned something about this case from the -- I guess  
2 from the newspapers, is what you circled.

3 A. Yes, sir.

4 Q. Do you recall what you heard or what you read?

5 A. Just the fact that a lady had been killed, and she  
6 was buried in the backyard, and there was robbery or  
7 something like that involved.

8 Q. Okay. Just kind of the general allegations?

9 A. The general allegations of what was in the paper.

10 Q. And, obviously, Judge Skeen asked the question to  
11 the general panel about from anything you had heard, from  
12 any hearsay or otherwise, had you formed an opinion as to  
13 the guilt or innocence of the defendant.

14 I think maybe two people raised their cards.  
15 You were not one of those, so I take it you have not formed  
16 an opinion about the guilt or innocence about this defendant  
17 based on what you've heard?

18 A. No, not based on what I've heard.

19 Q. And, obviously, you understand that -- you don't  
20 work for the newspaper, do you?

21 A. No.

22 Q. You understand that as good as the newspaper is,  
23 as much as they try to report things accurately, people  
24 misreport things, and you can't really take newscasts or  
25 radiocasts or newspaper articles necessarily at face value

1 as a juror.

2 You would have to be able to listen to the  
3 evidence and form your decisions, base your verdicts on what  
4 you hear from the witness stand and that's introduced into  
5 evidence.

6 Do you understand that?

7 A. Yes, sir.

8 Q. And you could do that?

9 A. Yes, sir.

10 Q. And, in fact, I think the Court would -- as part  
11 of the instructions, the Court places you under as a juror,  
12 the Court would say you can't listen to or read anything  
13 about this case.

14 A. Right.

15 Q. You would follow those instructions?

16 A. Yes, sir.

17 Q. You also indicate in your questionnaire some of  
18 your feelings about the criminal justice system, and I think  
19 actually you've circled that it could influence you -- your  
20 ability to be fair and impartial based on the Napoleon  
21 Beazley case.

22 A. Right.

23 Q. I want to talk to you a little bit about that.

24 A. Yes.

25 Q. Obviously, you filled out these questionnaires,



1 and you were able to give us a little bit of information  
2 about that. What you put was the Napoleon Beazley/Luttig  
3 when the judge attempted to stop his execution at the last  
4 moment.

5 Kind of tell me your feelings about that.  
6 Obviously, it's not this judge that you were referring to.

7 A. Right. I thought it was a little bit of an  
8 outrage when 12 people did convict him, and at the last  
9 minute, a judge jumped in and tried to stop it. And as far  
10 as I'm concerned, we never got any clarification on the  
11 reason why.

12 Q. Obviously, that was a death penalty case --

13 A. Yes, sir.

14 Q. -- that was tried here in Smith County. The  
15 defendant was sentenced to death and, ultimately, was  
16 executed. The fact that a judge -- and, obviously, that  
17 wasn't a defense lawyer or a prosecutor or one of the jurors  
18 that was involved in that case, but it was the judge.

19 Would that fact alone, the fact that the  
20 judge -- and I think, as it comes down and as more of it  
21 unfolded, we realized that the judge was acting within  
22 her -- the judge's rights in what she did.

23 A. Uh-huh.

24 Q. Would that affect your ability to sit as a fair  
25 and impartial juror on a totally separate and distinct case?

1 A. It definitely would if it was in her court.

2 Q. Right.

3 A. Yeah.

4 Q. And I understand that. It's not in her court.

5 A. Uh-huh.

6 Q. Understanding that that was a particular incident  
7 that happened way back, several years ago, would anything  
8 about that other judge doing something in some other case  
9 affect your deliberations in this particular case?

10 A. Absolutely not, no.

11 Q. It may be different if you were down the hall and  
12 in that court?

13 A. Right.

14 Q. But we're not, and you understand that?

15 A. Right.

16 Q. And nothing about that would affect your  
17 decision-making in this case?

18 A. That is right.

19 Q. And at the time you circled yes, you know, Judge  
20 Skeen had given you these instructions, and you had seen  
21 him, and I don't know if you realized he would be the  
22 presiding judge in this case and not that other judge.

23 A. Right.

24 Q. But the fact that Judge Skeen is presiding, who  
25 didn't have anything to do with that situation, the fact

1 that it's not in that judge's courtroom, you won't consider  
2 that at all in this particular case?

3 A. Oh, no, no.

4 Q. It will not affect your decision-making in this  
5 case?

6 A. Absolutely not.

7 Q. One other question specifically about your  
8 questionnaire. It talks about anyone ever having been  
9 arrested, charged, or convicted of a criminal offense, and  
10 then you indicated that you had been, a PCS in 1996.

11 Can you describe just a little bit -- just  
12 briefly. And, again, I apologize for prying in your  
13 personal life.

14 A. That's okay. That's okay. We had some marijuana  
15 in the car with us and basically got pulled over and caught  
16 with it.

17 Q. Who is "us"?

18 A. Me and a friend of mine.

19 Q. A misdemeanor?

20 A. Yes. Also, I forgot to put on there, I was pulled  
21 over for DWI at one time, but it was reduced to -- and you  
22 said don't put traffic tickets -- to a --

23 Q. Class C, reckless driving?

24 A. Reckless driving, yes, sir.

25 Q. Where was the initial DWI that was pled to a

1 Class C?

2 A. Probably in '96 or '5 or something like that  
3 maybe.

4 Q. Would -- first of all, do you believe you were  
5 treated fairly in that case?

6 A. Yes, sir.

7 Q. Anything by law enforcement, prosecutors, the  
8 judge, or defense lawyer that gave you -- left a bad taste  
9 in your mouth?

10 A. No. He went out of his way to be fair to me.

11 Q. "He" being the --

12 A. The highway patrol.

13 Q. -- law enforcement?

14 A. Highway patrol.

15 Q. Okay. Highway patrol?

16 A. Highway patrol.

17 Q. What about -- I know it was actually reduced down  
18 to the reckless driving. Do you believe that you were  
19 guilty of that?

20 A. Oh, yes, sir.

21 Q. And treated fairly just generally?

22 A. Yes, sir.

23 Q. What about the PCS? Were you actually guilty of  
24 that?

25 A. Yes, sir.

1 Q. Did you plead guilty?

2 A. Yes, sir.

3 Q. Were you treated fairly in that case?

4 A. Yes, sir.

5 Q. Do you recall what agency that was, what law  
6 enforcement agency?

7 A. Tyler Police Department.

8 Q. Tyler Police Department. Were you treated  
9 courteously and professionally in that case?

10 A. Uh-huh.

11 Q. Any problem at all with law enforcement or  
12 prosecutors or judges or defense lawyers?

13 A. No.

14 Q. Okay. That's really all I have to ask you  
15 about -- don't get excited yet -- about your questionnaire.  
16 Now I've got to move on to some general principles and talk  
17 about some general principles of law.

18 Let me start with witness credibility,  
19 because I've just asked you some questions about how you  
20 were treated by law enforcement, by DPS as well as Tyler  
21 police officers.

22 When you have witnesses who come into court  
23 and they're sworn to tell the truth and they testify, a lot  
24 of people give a lot of credibility to law enforcement  
25 officers, you know, that they are doing a public service,

1 not being paid real well to do it, take a lot of abuse from  
2 people, and really respect and admire the job they do.

3 The same could be said for teachers, doctors,  
4 or plumbers or just any profession that people have a lot of  
5 respect for. And some people will give them greater  
6 credibility than they would other people just by what they  
7 do for a living.

8 What the law says is, "Look, you can admire  
9 something -- someone for what they do. You can respect the  
10 job they do, but when you're talking about them testifying  
11 as a witness, you're not talking about respecting their job  
12 or admiring them for what they do; you're talking about just  
13 honesty."

14 What you can't do, the law says, is say, "I  
15 admire them and respect the job they do, so I'm  
16 automatically going to believe what they say."

17 What you have to do is you have to wait,  
18 listen to what they have to say, and then judge their  
19 credibility, and say, "Look, people are human, everybody is  
20 human, whether it's a doctor or a priest or a teacher or a  
21 lawyer. I'm going to wait and hear what they have to say,  
22 and then I'm going to decide whether they are telling me all  
23 the truth, some of the truth, or none of the truth."

24 Do you understand that's kind of where the  
25 law is going with that?

1 A. Yes, sir.

2 Q. Can you follow that portion of the law and wait  
3 until a witness testifies before you begin judging their  
4 credibility?

5 A. I would think I can, yes, sir.

6 Q. And, obviously, if a neurosurgeon comes in here  
7 and starts talking and testifying about neurology, they have  
8 specific training, so you can take their training into  
9 account, into what they're saying.

10 But as far as bare bones honesty, you've just  
11 got to wait and hear what they have to say and then judge  
12 whether they're telling you the truth or not.

13 A. Yes, sir.

14 Q. Can you do that?

15 A. Yes, sir.

16 Q. Now, let me talk a little bit about the  
17 presumption of innocence. Are you familiar with that term?

18 A. Yes, sir.

19 Q. Now, let me kind of relate it to you in that  
20 marijuana case you had. Obviously, as you went into court  
21 before you ever pled guilty, you had a presumption of  
22 innocence, okay? You were presumed to be innocent.

23 Now, you knew you were guilty, and you pled  
24 guilty, but you had that presumption of innocence. Anyone  
25 who is ever charged with a crime has that presumption of

1 innocence. Whether they're guilty or not guilty, they have  
2 that presumption.

3 Do you understand that?

4 A. Yes, sir.

5 Q. Do you agree with that presumption?

6 A. Yes, sir.

7 Q. And part of the reason people are presumed to be  
8 innocent from the very beginning is that a defendant who is  
9 charged with a crime has no burden. They don't have to do  
10 anything. They don't have to prove themselves innocent.  
11 They already have the presumption of innocence. Some of  
12 these principles kind of tie in together.

13 Let me kind of relate it to the Fifth  
14 Amendment right, the Fifth Amendment right against  
15 self-incrimination. No defendant has to climb up on the  
16 witness stand and say, "Hey, I'm not guilty; I'm innocent."

17 Why is that? Why don't they have to get up  
18 there and say they're not guilty?

19 A. I don't know.

20 Q. Well, they're presumed innocent, right? They're  
21 presumed innocent, and they don't have a burden. They don't  
22 have to do anything. It's up to the State; it's up to this  
23 table over here, the State of Texas, to prove a defendant  
24 guilty, right?

25 A. Yes, sir.



1 Q. All right. Does that make sense?

2 A. Yes, sir. I think I know where you're going with  
3 this.

4 Q. Okay. All of these rights that defendants have  
5 that are charged with crimes kind of work together. The  
6 presumption of innocence, they're presumed to be innocent.  
7 If you look at it like a race, we don't start out equal.  
8 The defendant starts ahead of us. Because he's presumed to  
9 be innocent. We have to catch up and prove him guilty,  
10 okay?

11 And we don't have to have him help us. We  
12 don't have to say, "You know, Mr. Defendant, climb up on  
13 that witness stand and let me ask you a bunch of questions."

14 A. Yes.

15 Q. Because he's got a right to do that, but he also  
16 has a right not to testify. And he doesn't have to testify  
17 because he's presumed to be innocent, and we have the burden  
18 of proof.

19 Does that make sense?

20 A. Yes, sir.

21 Q. When we talk about the burden of proof, there's a  
22 standard of proof that we have to use, and it's called  
23 beyond a reasonable doubt. We have -- we, being the State,  
24 have the burden of proving somebody guilty beyond a  
25 reasonable doubt.

1                   There is no definition of beyond a reasonable  
2 doubt is. It's whatever it means to you, but that's what  
3 our standard is by which we have to prove somebody guilty.  
4 And if we fail, if we don't prove someone guilty beyond a  
5 reasonable doubt, no matter how close we come, you have to  
6 find someone not guilty.

7                   Does that make sense?

8           A.    Yes, sir.

9           Q.    And it's because of that -- and it kind of all  
10 relates back to that presumption of innocence. He starts up  
11 here (indicating). We put in evidence and more evidence and  
12 more evidence, and we might get real close, but unless we  
13 prove him guilty to your satisfaction beyond a reasonable  
14 doubt, we never defeat that presumption of innocence.

15          A.    I understand.

16          Q.    Okay. And that's why he doesn't have to testify.  
17 You were a little hesitant with that Fifth Amendment right  
18 not to testify, so let me talk just a little bit more about  
19 that.

20                   I can't call -- the only person in the world  
21 I can't -- well, there are some people, but I cannot call a  
22 defendant to the witness stand to testify. His lawyer can't  
23 make him testify. That's his choice and his choice alone.  
24 He can confer with his lawyers, but, ultimately, it's going  
25 to be his choice.

1                   Let me ask you this: Would you be curious as  
2 a juror to hear from a defendant?

3           A.    Yes.

4           Q.    I think that's human nature. I think if I asked a  
5 hundred people that, I would get a hundred yeses.

6                   Do you have children?

7           A.    No.

8           Q.    Do you have a brother or a sister?

9           A.    I've got a sister.

10          Q.    When y'all were growing up -- were y'all close  
11 enough in age that y'all grew up together?

12          A.    Yes.

13          Q.    When y'all were growing up, did y'all ever fight  
14 or get in an argument or break something?

15          A.    Sure, yes.

16          Q.    And have your parents come say, you know, "What's  
17 going on here?"

18          A.    Yes.

19          Q.    Do you remember they probably -- if they were  
20 anything like my parents and like I am with my children,  
21 they would probably separate y'all and say, "Hey, what  
22 happened to you?" You didn't have a Fifth Amendment right  
23 in your own home, did you?

24          A.    No.

25          Q.    When they said, "Tell me what happened," you

1 pretty much had to tell them what happened.

2 A. Yes.

3 Q. You were compelled to testify against yourself,  
4 and you were probably even compelled to testify against your  
5 accomplice, your sister, right?

6 A. Yes.

7 Q. In your home, that's the way people are raised.  
8 That's the way people raise their kids all the time. There  
9 is no Fifth Amendment right in my house. I'm the dictator,  
10 okay? I get to make them testify, and I think most people  
11 do that.

12 That's why most people would be curious to  
13 hear both sides to a story, because that's the way people  
14 are raised. Does that make sense?

15 A. Yes.

16 Q. The difference is, in a courtroom, it is a  
17 democracy. There is a Constitution, and we do have rights.  
18 People who are accused do have rights. It's a democracy;  
19 it's not a dictatorship; and nobody can compel a defendant  
20 to get up on a witness stand and answer a bunch of  
21 questions.

22 Does that make sense?

23 A. Yes, sir.

24 Q. Would you be able to -- even though you're  
25 curious, what the law says is, "Hey, it's okay to be curious

1 as to what a defendant might say. You just can't hold it  
2 against him if he chooses to invoke that right he's entitled  
3 to."

4 Can you follow that?

5 A. Yes, sir.

6 Q. That Fifth Amendment right?

7 A. Yes, sir.

8 Q. Let me talk to you a little bit about grand jury.  
9 Obviously, people who come in here come in here with their  
10 common sense, with their intelligence.

11 You were probably pretty well aware that a  
12 defendant has been arrested, right? By the time it gets to  
13 this stage and we're in voir dire, you know there is an  
14 indictment because the Judge read parts of it to you last  
15 Thursday.

16 So you know he's been arrested. You  
17 understand that an indictment has been returned by a Smith  
18 County grand jury --

19 A. Yes.

20 Q. -- for the offense of capital murder.

21 Have you ever heard that expression "where  
22 there's smoke, there's fire"?

23 A. Yes.

24 Q. That doesn't really apply in a court setting.

25 Another thing that kind of is one of those

1 situations, when you came in Thursday, did you kind of  
2 wonder what the charge was, what he was alleged to have  
3 done --

4 A. Oh, yes.

5 Q. -- when you saw him?

6 A. Oh, yes.

7 Q. I think that's human nature. Again, probably if I  
8 asked a hundred people, they would all say the same thing.  
9 It's human nature, it's natural to wonder what somebody has  
10 been charged with, because you know they've been arrested,  
11 and you know they've been indicted, and you know that -- or  
12 you're familiar with that term "where there's smoke, there's  
13 fire."

14 But an indictment is not evidence of guilt,  
15 and the fact that he's been arrested is not evidence of  
16 guilt. The reason for that is, one, because he's got that  
17 presumption of innocence. But more importantly, a grand  
18 jury proceeding is nothing like a jury trial, nothing like a  
19 trial. The grand jury proceeding is -- have you ever been  
20 on a grand jury?

21 A. No, I have not.

22 Q. It's a secret proceeding. A defendant is seldom  
23 in the grand jury courtroom to be present. Defense lawyers  
24 are not entitled to be present. There is not  
25 cross-examination.

1           The standard to get an indictment issued or  
2     returned against a defendant is very low. It's probable  
3     cause. They simply find that there is probable cause to  
4     believe that the defendant committed an offense. Nothing  
5     like proof beyond a reasonable doubt required at trial.

6           Do you understand that difference?

7           A. Yes, sir.

8           Q. Can you agree with me that the fact that he's been  
9     arrested and indicted is not evidence of guilt, and you  
10    wouldn't consider it as evidence of guilt?

11          A. Yes.

12          Q. Now, when we talk about the burden of proof, as I  
13    probably said, it stayed over here. We have the burden of  
14    proof all the time. It never shifts to the Defense. I give  
15    kind of a silly example, because these are both very  
16    experienced, very fine lawyers, and they've tried many, many  
17    cases, including capital murder cases.

18                 But they could sit over there representing  
19    Mr. Beatty; they could just sit over there mute. They don't  
20    have to say a word; they don't have to question you; they  
21    don't have to question any witnesses; they don't have to  
22    give an opening statement; they don't have to give closing  
23    arguments; they sure don't have to present any evidence.

24                 And the reason for that is the burden of  
25    proof is here, and it never shifts to the Defense. He's got

1 the presumption of innocence. He doesn't have to do  
2 anything else other than sit here politely like everyone  
3 else.

4 A. I understand.

5 Q. Okay. I want to -- I probably should have said  
6 this at the beginning, but every question that I ask you and  
7 any question that Mr. Perkins or Mr. Hawk asks you is --  
8 you've got to understand that you've not heard one word of  
9 evidence in this case. They're all predicated on the fact  
10 that you don't know anything about this case; you don't know  
11 any of the evidence.

12 So you understand that?

13 A. Yes.

14 Q. Basically, what the law says to be qualified as  
15 juror is you have to have an open mind. You have to be able  
16 to listen to the evidence. You have to keep an open mind  
17 and not prejudge things.

18 You can't prejudge a witness's credibility  
19 like we talked about. You can't prejudge whether somebody  
20 is guilty or not guilty. You can't prejudge somebody is  
21 guilty because they've been indicted or arrested for an  
22 offense.

23 You see kind of how all these work together?

24 A. Yes, sir.

25 Q. So if you will kind of remember one thing that we



1 talked about, keep in mind that what the law says is, to be  
2 a qualified juror, you just have to simply say, "I have an  
3 open mind. I'm going to listen to the evidence before I  
4 make a decision. I'm going to hear the evidence before I  
5 return a verdict. I'm going to wait and listen to the  
6 witness before I judge his credibility."

7 Just every time, anything that's asked of  
8 you, you've just got to say, "I'm going to keep an open  
9 mind, I'm going to listen, and then I'm going to make my  
10 decision."

11 It's kind of like buying a car. You wouldn't  
12 want to buy a car sight unseen. You would want to take a  
13 look at it, test-drive it, look at it as a mechanic before  
14 you buy it, true?

15 A. Right.

16 Q. That's what you've got to do to be a qualified  
17 juror. Does that make sense?

18 A. Yes, sir.

19 Q. Let me talk to you a little bit about -- you  
20 understand that the grand jury has returned an indictment in  
21 this case for the offense of capital murder. There are what  
22 are called, though, in the law lesser included offenses, and  
23 I like to look at it as a ladder, okay?

24 Capital murder would be the highest rung in  
25 this ladder. That's what the indictment has been returned

1 for.

2                   There can be situations, though, in trials --  
3 and we can't talk about the evidence in this particular  
4 case. We're talking in hypotheticals, but there can be  
5 situations in which you might think -- let me back up a  
6 little bit further because I think I skipped over talking  
7 with you about what capital murder is.

8                   Capital murder is different than murder.  
9 Capital murder has only two punishments that can be returned  
10 if you find someone guilty of capital murder: Life in  
11 prison or the death penalty.

12                   Murder, on the other hand, is a first degree  
13 felony, and it's got a punishment range of not less than  
14 five years nor more than the ninety-nine years or life. So  
15 five to ninety-nine years or life in the penitentiary.

16                   If I -- let me give you an example. If I  
17 pulled out a gun, and I thought about it for a week or so,  
18 and I decided I didn't like Mr. Bingham. I wanted to be the  
19 district attorney, and I wanted to get him out of the  
20 picture. And I didn't like the fact that he made more money  
21 than me and has nicer suits than me and lives in a bigger  
22 house than me, all those kind of things.

23                   And I shot Mr. Bingham 50 times, and I  
24 reloaded several times, and I kept shooting him, and I  
25 laughed as he slowly died, because I didn't shoot him in a

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR  
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1 major organ, I shot him in the leg or arm or neck or in the  
2 shoulder, really made it hurt.

3 And I just kicked him as he was lying there  
4 dying, and I said, "I hope you remember and see your  
5 daughter's face as you sit here dying." I could be the  
6 worst person in the world; I could have been to the  
7 penitentiary three times; I am never eligible for the death  
8 penalty if that's all I do.

9 Because what that is, is that's a murder;  
10 intentionally taking the life of another human being without  
11 legal justification. That's an example of what murder is.

12 The legislature said murder has that five to  
13 ninety-nine-year or life range of punishment. Death isn't  
14 on the table. It's only when you're convicted of capital  
15 murder that you are death eligible.

16 So examples of capital murders, the  
17 legislature has said there are certain offenses that can be  
18 classified as capital murders: Murder of a child under the  
19 age of six -- and sometimes we call this murder plus,  
20 because there is the murder, and then there's some other  
21 circumstance that makes it a capital murder -- murder of a  
22 child under the age of six; murder of a police officer or  
23 fireman in the course of their duties; murder of multiple  
24 individuals in the same criminal transaction --

25 A. Okay.

1 Q. -- murder for hire, if I pay somebody to commit a  
2 murder or someone pays me and I commit the murder, kind of a  
3 hitman situation, that can be a capital murder; murder in  
4 the course of committing one of several felonies.

5 Murder in the course of committing burglary  
6 or robbery or arson or aggravated sexual assault or  
7 kidnapping, those can be capital murders as well.

8 You kind of see the distinction? It's a  
9 murder plus.

10 A. Yes.

11 Q. Do you have any problem with the way the  
12 legislature is trying to define capital murder and death  
13 eligible individuals?

14 A. No.

15 Q. You can see why it can be called kind of murder  
16 plus?

17 A. Yes, I can.

18 Q. Now, let's get back to that ladder I was talking  
19 about, because the grand jury in this case has returned that  
20 indictment for the offense of capital murder. There are  
21 lesser included offenses at lower rungs that come within  
22 what a capital murder can be.

23 Let me give you an example. Let's say --  
24 keep in mind that a capital murder can be in the course of  
25 committing an aggravated sexual assault. Let's say in a

1 hypothetical case, we're trying the case and come to find  
2 out, we've presented all the evidence.

3 And you go back to the jury room, and you  
4 say, "You know, I have no doubt at all that this defendant  
5 committed murder. He killed her clear as day. I've got no  
6 problem at all with that. But I didn't see any evidence  
7 that there was a rape. I didn't see any evidence, in the  
8 course of this murder, he committed aggravated sexual  
9 assault. I just don't see it."

10 Well, what you would have to do is you would  
11 have to say, "Well, for capital murder, he's not guilty,"  
12 right? Because you've got the murder, but you don't have  
13 the plus. You don't have in the course of committing the  
14 aggravated assault.

15 He's not guilty of capital murder, so you  
16 consider these lesser included offenses, one of which could  
17 be murder. And you found sufficient evidence beyond a  
18 reasonable doubt that he was guilty of murder.

19 So the proper verdict in that situation would  
20 be not guilty to capital murder but guilty to the lesser  
21 included offense of murder. Do you see where I'm going with  
22 that?

23 A. Yes, sir. Uh-huh.

24 Q. You might have a situation that -- you know, there  
25 are millions of scenarios, but you might have a situation

1 where a lesser included offense -- in that same scenario,  
2 maybe you didn't believe that the defendant actually killed  
3 her but raped her. Maybe someone else killed her. You  
4 would find not guilty to capital murder, not guilty to  
5 murder, but guilty of aggravated sexual assault.

6 Do you see what I'm saying?

7 A. Yes, sir.

8 Q. Basically, you just have to say, "I can  
9 consider -- knowing that he's been indicted for the offense  
10 of capital murder, I can listen to the evidence, I can wait,  
11 judge that evidence, and decide if he's guilty of capital  
12 murder or not, and I can keep an open mind to whether he's  
13 guilty of any of these lesser included offenses."

14 Can you do that?

15 A. Yes, sir.

16 Q. All right. And, obviously, it's not appropriate  
17 at this phase to give you facts specific to this case.

18 A. I understand that.

19 Q. We can only talk in hypotheticals.

20 But you would have an open mind as to these  
21 lesser included offenses?

22 A. Yes, sir.

23 Q. All right. Let me talk to you a little bit about  
24 the range of punishment for some of these lesser included  
25 offenses. And what I want to do is talk about -- before we

1 get there, talk about the trial system that we have in  
2 Texas.

3 We have what's called a bifurcated trial  
4 system. That means we have two phases of trial in any case,  
5 in any criminal case. You have a guilt or innocence phase  
6 of trial, and then you have the punishment phase. They're  
7 distinct phases of trial.

8 In the guilt or innocence phase of trial,  
9 typically, you're going to hear only evidence that applies  
10 to whether a defendant is guilty of what he's been charged  
11 with. And that makes sense.

12 A. Yes.

13 Q. If you find someone guilty of an offense, you then  
14 move to the punishment phase of trial. And in the  
15 punishment phase of trial, you might hear different  
16 evidence.

17 You always consider and keep in mind what you  
18 heard in the first phase, that guilt/innocence phase, and  
19 carry it with you, but you might hear additional evidence in  
20 the punishment phase of trial, because at the punishment  
21 phase, you're not worried about whether he committed the  
22 crime; you're worried about what to do with it.

23 Does that make sense?

24 A. I understand. Yeah.

25 Q. And in the punishment phase of trial, you might

1 hear evidence that wasn't relevant to whether he committed  
2 the crime but is only relevant to what to do with him. You  
3 might hear evidence about prior convictions that he's had,  
4 whether he's been to the penitentiary before, if he's been  
5 to the penitentiary, what type of conduct he had while in  
6 the penitentiary.

7 You might hear about what he's done on  
8 parole. You might hear about drug use or drug abuse. You  
9 might hear about other bad acts that he's committed. You  
10 might hear psychological/psychiatric --

11 MR. HAWK: Judge, I just object, because  
12 there's not a question in here.

13 MR. HARRISON: There is going to be.

14 THE COURT: I take it eventually there will  
15 be.

16 MR. HAWK: That's what we're looking for,  
17 Judge.

18 MR. HARRISON: I was an English major. I  
19 sometimes speak in long sentences.

20 Q. (By Mr. Harrison) You might hear evidence of  
21 psychiatric or psychological testing of the defendant. You  
22 might hear all those types of evidence in the punishment  
23 phase that wouldn't have been relevant or admissible in the  
24 first phase of trial.

25 Do you understand how that works?



1 A. Yes, sir.

2 Q. Can you agree with me that you would consider the  
3 guilt/innocence phase and the punishment phase separate from  
4 one another?

5 A. Yes.

6 Q. Make a finding in the guilt/innocence phase, and  
7 if you found someone guilty, be able to then consider the  
8 punishment phase?

9 A. Yes.

10 Q. Now, specifically as it relates to these lesser  
11 included offenses -- because, as I said before, in a capital  
12 murder case, if you find the defendant guilty, there are  
13 only two options: Life or death, right?

14 A. Yes.

15 Q. In any of those other lesser included offenses,  
16 you're going to have a range of punishment. So I'll just  
17 take murder, for example. Let's say after hearing all the  
18 evidence, you had determined that somebody was not guilty of  
19 capital murder but guilty of murder.

20 You would then be in the punishment phase  
21 where you might hear this additional evidence, and you would  
22 have this five years to ninety-nine years or life to  
23 consider as far as a range of punishment.

24 What you can't do, as a juror, is say, "Look,  
25 he was initially indicted for the offense of capital murder,

1 so I'm automatically going to give him a jacked-up sentence  
2 on a murder conviction."

3 What you have to do is say, "Look, whoa, I'm  
4 going to wait, I'm going to listen to the evidence, I'm  
5 going to consider what I've heard, and then I'm going to  
6 consider that full range of punishment, and I'm going to  
7 decide where in that range of punishment this defendant  
8 fits."

9 Is that fair?

10 A. Yes.

11 Q. And the fact that if you have found someone guilty  
12 of a lesser included offense, even though they were  
13 initially indicted for the offense of capital murder, it's  
14 not relevant any longer that he was ever indicted for murder  
15 because you've found him not guilty now.

16 A. I see.

17 Q. It's not relevant any longer. Now what he's been  
18 found guilty of is murder, and you have to say, "Where on  
19 this punishment range does he fit?"

20 Can you do that?

21 A. Yes, sir.

22 Q. And for any lesser included offense, it talks  
23 about murder being five years to ninety-nine years or life.  
24 There could be other lesser included offenses of that even,  
25 and you could get down to a situation where you've got a low

1 punishment range, two years to twenty years, or something  
2 like that on a manslaughter, for instance.

3 And, basically, you know, I can't give you  
4 specific facts. You just have to say, "Look, I don't care  
5 if the range of punishment is two years to twenty years or  
6 five to ninety-nine years. What I'm going to do is I'm  
7 going to wait to hear the evidence, and then I'm going to  
8 plug in where he fits.

9 "And if that's two years, that's what I'm  
10 doing. And if it's twenty years, that's what I'm doing.  
11 And if it's fifty years, that's what I'm doing, but I can't  
12 tell you right now. I'm going to keep an open mind until I  
13 hear what the evidence is."

14 Can you do that?

15 A. Yes, sir.

16 Q. Any problem at all with that?

17 A. No, sir.

18 Q. Let me talk with you about the sentencing phase of  
19 capital murder, because that's why we're here. As I've  
20 said, in a capital murder sentencing phase, you don't check  
21 off a box that says "life" or "death."

22 What you do is you have those special issues,  
23 and the way that you answer those special issues dictates  
24 whether a life sentence will be imposed by the judge or  
25 whether a life (sic) sentence will be imposed by the judge.

1                   You understand that?

2           A.    Yes, sir.

3           Q.    Let me first tell you that on a life sentence it's  
4 not life without parole; it's not life day for day until  
5 they die in prison. We don't have life without parole in  
6 Texas. Some states do.

7                   What we have is a system where a life  
8 sentence on capital murder means 40 years to serve day for  
9 day before they can become eligible for parole. So there's  
10 a time in the future when a defendant convicted of capital  
11 murder, who is assessed a life sentence, will become  
12 eligible for parole.

13                   So that's what life is. It's not truly life;  
14 it's 40 years before they become eligible for parole.

15                   Looking at the special issues -- do you have  
16 a taped sheet there on the witness stand that's entitled  
17 "Special Issues"?

18          A.    Yes, sir.

19          Q.    There are three of them. Are there three of them?

20          A.    Yes, sir.

21          Q.    I'm going to ask you to disregard that second one,  
22 but I want you to look at and read that first one to  
23 yourself, if you would.

24          A.    (Complies.) Okay.

25          Q.    Now, what I want to know, first of all, is after

1 looking at that special issue and understanding that we're  
2 not asking a juror to come back and say "life" or "death,"  
3 but coming back answering those special issues, do you think  
4 that's an appropriate question to ask in determining whether  
5 somebody is deserving of the death penalty?

6 A. Absolutely.

7 Q. Sometimes we look at those special issues as kind  
8 of winnowing down the people who are death deserving.  
9 Anyone who's convicted of -- well, a person can be eligible  
10 for the death penalty if they're convicted of capital  
11 murder.

12 Not all people are, but the people who are  
13 eligible for the death penalty, in answering those special  
14 issues, it kind of winnows it down for the people who are  
15 actually death deserving.

16 And you can see that from that first special  
17 issue, can't you?

18 A. Yes, sir.

19 Q. It reads, "Is there a probability that the  
20 defendant would commit criminal acts of violence that would  
21 constitute a continuing threat to society?" Good question.  
22 People want to know if someone is going to be a future  
23 danger to society.

24 A. Yes, sir.

25 Q. Do you know the difference or can you make a

1 distinction between a mere possibility versus probability?

2 Let me give you an example. Do you play the  
3 lottery --

4 A. Yes, sir.

5 Q. -- occasionally?

6 Do you think that when you play the lottery,  
7 there's a possibility or a probability that you're going to  
8 win?

9 A. There's a possibility.

10 Q. Yeah. It's a mere possibility, not a real good  
11 one at that. So you can see that probability is the higher  
12 standard?

13 A. Yes, sir.

14 Q. That first special issue requires the burden of  
15 proof to stay here on the State, just like it did in trial,  
16 okay? Because to get to this punishment phase, obviously,  
17 the State has had to prove somebody guilty of capital murder  
18 beyond a reasonable doubt, right?

19 A. Right.

20 Q. We've had the burden, and it's never shifted to  
21 the Defense.

22 That first special issue, we also have the  
23 burden, and it's the same burden we had at trial. It's to  
24 prove someone -- to prove this special issue beyond a  
25 reasonable doubt.

1                   You okay with that?

2           A.    Yes, sir.

3           Q.    Do you think that's appropriate that the State  
4 ought to have that burden of proof?

5           A.    Yes, I do.

6           Q.    Do you think that's an appropriate burden of  
7 proof?

8           A.    Yes, I do.

9           Q.    All right. That probability that the defendant  
10 would commit criminal acts of violence, that term, that  
11 phrase, "criminal acts of violence," there's not really a  
12 definition of that.

13                   You're not going to be instructed that  
14 criminal acts of violence have to be another capital murder  
15 or another murder or anything in particular. It's whatever  
16 it means to you, whatever another criminal act of violence  
17 would be to you.

18                   Does that seem fair?

19           A.    Yes, sir.

20           Q.    That would constitute a continuing threat to  
21 society.

22           A.    Yes, sir.

23           Q.    Let me ask you what you think about when you hear  
24 the term or think about the term "society." What do you  
25 think about?

1 A. Just the general public.

2 Q. General public, the free world?

3 A. Free world.

4 Q. Can you see a society in the penitentiary as well?

5 A. Yes, I can.

6 Q. Did you know doctors work in the penitentiary?

7 A. Yes.

8 Q. And nurses?

9 A. Yes.

10 Q. And food people, who prepare food, cooks and  
11 deliver food?

12 A. Yes.

13 Q. Guards, psychiatrists, psychologists, teachers,  
14 other inmates?

15 A. Yes, sir.

16 Q. So you can see that there is prison society as  
17 well as a society that people have here in Smith County.

18 A. Yes.

19 Q. If you answer this first special issue -- if we  
20 proved it to you that -- beyond a reasonable doubt that he,  
21 in fact, would be -- would commit criminal acts of violence  
22 that would constitute a continuing threat to society, you  
23 would answer that first special issue yes?

24 A. Yes, I would.

25 Q. What you can't do is you can't just say -- and



1 sometimes defense attorneys will ask this. I don't think  
2 these defense attorneys would, but sometimes they say,  
3 "Look, you've already found somebody guilty of capital  
4 murder. You've already found somebody guilty of  
5 intentionally killing another person. Wouldn't you always  
6 answer that special issue yes?"

7 A. Yes.

8 Q. Okay. You can see that, but you wouldn't do that,  
9 would you? I mean, you wouldn't automatically say, "I found  
10 somebody guilty of capital murder. I'm always going to  
11 answer this yes because it would be silly to have these  
12 special issues," or you would just say, "Look, if you found  
13 someone guilty of capital murder, you're always going to  
14 give them the death penalty."

15 Do you see what I'm saying?

16 A. Yes, I do.

17 Q. I mean, that wouldn't be fair.

18 A. No, it wouldn't.

19 Q. What you have to do is you have to consider the  
20 guilt or innocence phase of a capital murder trial on its  
21 own, and then you have to take that evidence and apply it to  
22 the punishment phase in addition to listening to all the  
23 punishment evidence.

24 And you have to then say, "Look, exclusive of  
25 what I've found already, exclusive of the fact that I found

1 someone guilty of capital murder, I'm going to make an  
2 independent determination as to the answer to this special  
3 issue.

4 "I'm going to consider that evidence from the  
5 guilt/innocence phase, I'm going to consider this evidence  
6 on punishment, and I'm going to think to myself, do I  
7 believe that it's been proven beyond a reasonable doubt  
8 there's a probability that the defendant would commit  
9 criminal acts of violence that would constitute a continuing  
10 threat to society? And if I believe it's been proved beyond  
11 a reasonable doubt, I'm going to put yes."

12 A. Yes.

13 Q. "And if I believe it has not been proved or if I  
14 have a reasonable doubt, I'm going to say no."

15 A. Right.

16 Q. Can you do that?

17 A. Yes, sir.

18 Q. In other words, you wouldn't automatically say,  
19 just because you found someone guilty of capital murder,  
20 you're always going to find that there is a probability that  
21 they would commit criminal -- continuing acts of criminal  
22 violence?

23 A. No.

24 Q. You don't have a problem looking at the special  
25 issue on its own?

1 A. No, I don't.

2 Q. All right. Now, skip down to Special Issue  
3 Number 3 and go ahead take a second to read that to  
4 yourself.

5 A. (Complies.) Okay.

6 Q. Have you had a chance to read that one?

7 A. Yes, sir.

8 Q. It sounds a little bit more complicated than it  
9 actually is. Let me tell you a little about that third  
10 special issue.

11 First of all, this one also -- just like that  
12 first special issue, you look at it on its own. These don't  
13 build on each other. You don't say, "I found someone guilty  
14 of capital murder, so I found -- so I find it yes to Special  
15 Issue Number 1, and I'm going to find it no to Special issue  
16 Number 3."

17 You look at them on their own. You wait  
18 and -- again, you wait and you hear the evidence, and then  
19 you consider the special issue based on the evidence.

20 Can you do that?

21 A. Yes, sir.

22 Q. Now, a special issue is a little different than --  
23 3 is a little different than Special Issue Number 1 in that  
24 there is no burden of proof on anybody on Special Issue  
25 Number 3.

1 A. Uh-huh.

2 Q. We don't have to prove anything; the Defense, like  
3 they never do, never have to prove anything or present any  
4 evidence on Special Issue Number 3. There is no burden of  
5 proof.

6 It's kind of one of those things -- one of  
7 the jurors we had previously summed it up pretty well. They  
8 said, "It's either there or it isn't."

9 Does that make sense after reading it?

10 A. Yes.

11 Q. All right. So "taking into consideration all the  
12 evidence, including the circumstances of the offense, the  
13 defendant's character and background, the personal moral  
14 culpability of the defendant, is there a sufficient  
15 mitigating circumstance or circumstances to warrant that a  
16 sentence of life imprisonment rather than a death sentence  
17 be imposed?" That's what the special issue is.

18 There are a couple of things I want to kind  
19 of ask you specifically about the wording in Special Issue  
20 Number 3. Taking into consideration all the evidence,  
21 which, obviously, indicates you take into account the  
22 guilt/innocence evidence, as well as any punishment evidence  
23 you heard.

24 You consider everything you heard, not label  
25 it from where it came. You don't say, "Well, I'm going to

1 say the State brought me this evidence and this evidence,  
2 and the Defense brought this evidence." You can't do that,  
3 because, obviously, the Defense doesn't have to present  
4 evidence, but you take everything as a whole; you consider  
5 it.

6 And what you do is kind of a two-step  
7 process. You say, "First of all, is there a mitigating  
8 circumstance or circumstances," okay? Mitigating is  
9 something that lessens the moral blameworthiness of  
10 somebody, kind of makes it -- lessens their blameworthiness,  
11 okay? Is there mitigation or mitigating circumstance or  
12 circumstances, okay?

13 Do you understand kind of what you're looking  
14 for? "Is there something that I've seen from this trial  
15 from either the guilt/innocence phase or the punishment  
16 phase that lessens the personal blameworthiness, the moral  
17 blameworthiness of the defendant," okay?

18 A. Okay.

19 Q. You look to see if you find something first, and  
20 it can be, as it says, circumstance or circumstances. It  
21 can be one circumstance, or it can be multiple circumstances  
22 that you believe is mitigation, whatever that mitigation is.

23 And I'll tell you this: It can be whatever  
24 you believe it to be. There is not going to be a definition  
25 of what it is or isn't. If you believe it to be mitigation,

1 that's it.

2 And you don't have to agree with the other  
3 jurors. They might think something is mitigation, and you  
4 might not and vice versa. It's up to each individual juror  
5 to consider what they believe to be mitigating circumstance  
6 or circumstances.

7 Make sense?

8 A. Yes, sir.

9 Q. So, first of all, you identify if you see any, and  
10 you might not find any, or you might find several things  
11 that constitute mitigating circumstances, okay? That's your  
12 first inquiry.

13 You then -- if you find some or one  
14 circumstance, you then go further, and you do that second  
15 step, and you say, "Is it sufficient in my mind to warrant a  
16 life sentence over a death sentence?"

17 Does that make sense?

18 A. Yes, sir.

19 Q. Because you might find age or might find 15 things  
20 that are mitigating, whatever they are, but not one of those  
21 may be sufficient to mitigate -- to warrant a life sentence  
22 over a death sentence, okay?

23 Does that make sense?

24 A. Yes, sir.

25 Q. Or by the same token, just simply having one might

1 be enough, might be sufficient to assess a life sentence  
2 instead of a death sentence.

3 Does that make sense?

4 A. Yes, sir.

5 Q. All right. Can you answer that special issue,  
6 that third special issue after considering all the evidence?

7 A. Yes, I can.

8 Q. Can you consider it on its own, away from and  
9 apart from that first special issue, despite the fact that  
10 you've already found someone guilty of capital murder?

11 A. Yes, sir. I think I probably could.

12 Q. Again, think you probably could. I know what  
13 mean. I know you are being polite, and that's how we kind  
14 of phrase things, but, basically, it's like everything else,  
15 like we talked about towards the beginning.

16 What you've got to be able to do to be a fair  
17 juror is say, "Look, I know to get to the punishment phase  
18 of a capital murder case, I've got to have found someone  
19 guilty," right, or you wouldn't be in the punishment phase.

20 "So I've already found someone guilty, and  
21 I've looked at the evidence, and I've answered Special Issue  
22 Number 1 that there is a probability that the defendant  
23 would commit criminal acts of violence that would constitute  
24 a continuing threat to society. I know that.

25 "What I'm now going to do is I'm still going

1 to look at all the evidence I've heard from any source, and  
2 I'm going to do that two-step process. In my mind, I'm  
3 going to identify, if I find any mitigation, and then I next  
4 say, do I personally -- regardless of what anyone else  
5 thinks, do I find it to be sufficient to warrant a life  
6 sentence instead of a death sentence?"

7 Can you do that?

8 A. Yes, sir.

9 Q. Despite the fact that you found someone guilty of  
10 capital murder, despite you found the probability that they  
11 would commit future acts of criminal violence, you could  
12 still do that?

13 A. Yes.

14 Q. All right. And that's all the law says. The law  
15 says -- otherwise, there would be no reason to have these  
16 special issues, right?

17 A. Right.

18 Q. Or there would be no reason to have the third one.  
19 If you find him to be guilty and you find him to be a future  
20 danger, that's it.

21 Obviously, there's a reason there's this  
22 third one, and it's one more check and balance. It's one  
23 more hurdle that we have to go over to narrow down those who  
24 are death deserving, right?

25 A. Uh-huh.



1 Q. Do you think that's a fair question? I asked you  
2 that about the first special issue. Do you think that's a  
3 good question to ask?

4 A. Yes, I do.

5 Q. Do you see how it kind of narrows down the field  
6 of those who are death deserving?

7 A. Yes.

8 Q. Do you have any questions about how --

9 A. Are mitigating -- that's the things that have to  
10 do, like, with the crime. I mean, it has to do with the  
11 crime that he did, but it's a reason that he did that.

12 Q. Well, it can be. It certainly can be. It can be  
13 anything.

14 A. Yeah, I see.

15 Q. It can be something -- why he committed the crime.

16 A. I see.

17 Q. It can be any number of things. Again, I don't  
18 want to give specific examples of what it could be or it  
19 couldn't be because it's up to you.

20 A. Right.

21 Q. Whatever you believe is sufficient or is  
22 mitigation can be used by you.

23 And then you do that second step and say, is  
24 it sufficient? Because you might find -- you know, I  
25 said 15; you might find 200 reasons or circumstances that

1 are mitigation to you.

2 Some of them could be why he committed the  
3 crime; some of them could be home life, whatever. You could  
4 find 200 of them.

5 And then in that second step, you can say,  
6 "You know what? I found 200 of them, but not any of those  
7 are sufficient to warrant a life sentence over a death  
8 sentence," or you can only find one and say it is  
9 sufficient. It's entirely up to you.

10 A. I understand.

11 Q. And you have to look at it separate from that  
12 first special issue and separate from the guilt or innocence  
13 phase.

14 Does that make sense?

15 A. Yes, sir.

16 Q. Any question at all about that?

17 A. No, sir.

18 Q. Let me talk to you about a couple more very quick  
19 areas. We have something in Texas called victim impact.  
20 It's actually -- there are Supreme Court cases that say it's  
21 legitimate in the punishment phase.

22 You could have victim-impact testimony from  
23 relatives of the deceased as to how this loss, this grief,  
24 has affected their lives. It's certainly admissible. It  
25 can be brought up. Jurors can consider it for whatever

1 purpose they want to.

2 You may be affected by it. You may not be  
3 affected by it. It's like a basket of evidence. When  
4 you're looking at this case, you put in items of evidence,  
5 things that you're going to consider, right?

6 Victim-impact testimony might be something  
7 that you just say, "I'm going to consider it and put it in  
8 that basket along with everything else." And it might be  
9 something that you say, "That doesn't really mean anything  
10 to me," and you don't consider it. That's up to you. It's  
11 deserving of whatever weight you want to give it, if any.

12 A. I understand.

13 Q. What you can't do is say, "I'm so affected by this  
14 victim -- you know, this compelling, this victim-impact  
15 testimony that I'm going to disregard the other evidence and  
16 have such a thirst for revenge that I'm going to disregard  
17 the evidence, and I'm going to automatically return a  
18 verdict that will result in the death penalty."

19 Do you understand that?

20 A. Yes, sir.

21 Q. You would not do that, would you?

22 A. No.

23 MR. HARRISON: May I have one moment, Judge?

24 THE COURT: Yes.

25 (State's counsel confer.)

1 Q. (By Mr. Harrison) Let me -- final thing and then  
2 I'm going to pass you and let you go through another torture  
3 with the Defense asking you probably close to the same  
4 length of time that I've had you.

5 As we talked about, the things that you've  
6 got to remember as a potential juror is you've got to have  
7 an open mind. Very important for you to remember that every  
8 answer you're giving us, whether I'm asking or the Defense  
9 is asking, is predicated on not knowing any of the evidence.

10 You've got to keep an open mind and not  
11 formulate opinions before you hear the testimony. The law  
12 wants to ensure that you're open-minded, that you can be  
13 impartial, that you can wait to make your decisions only  
14 after you hear the evidence in the case.

15 Is that fair?

16 A. Yes, sir.

17 Q. Like I talked about, those general principles of  
18 law, you've got to be open-minded to affording someone their  
19 Fifth Amendment right not to testify. You've got to be able  
20 to keep an open mind and give them their presumption of  
21 innocence that they're entitled to.

22 You've got to wait and not judge the  
23 evidence, not say, "I'm predisposed of finding someone  
24 guilty of capital murder or not." You've got to wait and  
25 base it on the evidence.

1                   You've got to say, "I'm not predisposed to  
2 automatically answer the special issues in a way that's  
3 going to ensure a death penalty or ensure a life sentence.  
4 You just have to be able to say, "Look, I'm going to listen  
5 to the evidence. I'm going to keep an open mind. I'm going  
6 to judge fairly and do what I think is right based on the  
7 evidence."

8                   Can you do that?

9           A.    Yes, sir.

10          Q.    And if you do that, that's all anyone can ask.

11                  Do you have any questions of me or --

12          A.    No, sir.

13          Q.    Mr. Pearson, thank you very much for your patience  
14 with me.

15                  MR. HARRISON: I'm going to pass the witness  
16 (sic), Your Honor.

17                               VOIR DIRE EXAMINATION

18 BY MR. HAWK:

19          Q.    Mr. Pearson, how are you?

20          A.    I'm fine.

21          Q.    Do you need to stand up and stretch?

22          A.    No. I'm okay.

23          Q.    Okay. The good thing is, I'm not going to talk  
24 for nearly the amount of time as Mr. Harrison talked. How's  
25 that?

1 A. That's fine.

2 Q. Make you feel any better?

3 A. Yes, sir.

4 Q. Do you want to know the bad news? I'm talking  
5 long enough to where I've got water. How's that?

6 A. Okay.

7 Q. Do you need a glass of water or something?

8 A. No. I'm fine. Thank you.

9 Q. The 24-page questionnaire you filled out has saved  
10 me 24 pages of questions. That was not an exercise in vain.  
11 It really wasn't.

12 If you and me were in a different setting and  
13 I saw you somewhere, we'd sit and visit, and I'd learn about  
14 where you live and what you do and if you've got a family,  
15 what kind of car you drive, and where you live.

16 And so we'd learn that kind of stuff over  
17 time, but, basically, what happened was you take an hour to  
18 do it and us taking time to review it, it saved us a lot of  
19 time today, and we appreciate you doing that.

20 I'm going to ask you questions about the same  
21 general topics, but I'm going to tweak your thinking a  
22 little bit on most of these. Because the way that our  
23 system works is, there's a State and then there's a  
24 defendant.

25 The State has called this -- as they say,

1 there has been a grand jury that has returned an indictment,  
2 and they say that their road map leads to capital murder.  
3 And if I've heard that word, "capital murder," out of his  
4 mouth and the Judge's mouth one time, I've heard it 300  
5 times in the last couple of hours.

6 And the way it works is that's the way the  
7 road map goes. Well, obviously, jurors may have a little  
8 different opinion of that, and the evidence may have a  
9 little bit different opinion of that. So this gets back to  
10 the age-old principle that no matter how flat you try to  
11 make a pancake, there are two sides to it.

12 And so I want to ask you about some of these  
13 principles, kind of the rubber meets the road, and look at  
14 it just a little bit differently, a way you may not have  
15 thought about it in the past and a way that maybe  
16 Mr. Harrison didn't ask you about specifically, okay?

17 A. Okay.

18 Q. Hopefully, we can get you talking and telling us  
19 things we never knew about before. The job interview you're  
20 going through now, have you ever gone through a two-hour job  
21 interview like this?

22 A. No, I haven't.

23 Q. And that's what this really is. I mean, you are  
24 helping us determine whether, under the law, you are a  
25 qualified juror, and you've got to answer lots of questions

1 from us.

2 And interestingly, your job, basically, is  
3 three different things throughout the entire time. You've  
4 got to decide, if you're a juror, did the defendant commit a  
5 crime, okay? That's how you start.

6 The second thing is, if he didn't, guess  
7 what? That's the end of it, all right?

8 Does that make sense to you?

9 A. Yes, sir.

10 Q. The second thing is, though, if you decide, as a  
11 juror in some case, and you're on it, obviously, if he  
12 committed a crime, what crime did he commit, right?

13 A. Right.

14 Q. It may be one he got charged with; it may be a  
15 crime that's close to what he got charged with but actually  
16 not the one he got charged with. It could be a lesser one;  
17 it could be anything that you see in the jury instructions  
18 that the Judge tells you about at the end of the case,  
19 right?

20 A. Right.

21 Q. And the third step you get to only if you find the  
22 answer to the first two is yes, and you define which crime  
23 it was. Then and only then do you get to decide as a juror  
24 what's supposed to happen to him, okay?

25 And that's kind of the framework that jurors



1 have to go through, and that's why you're going through this  
2 two-hour job interview, okay?

3 A. Okay.

4 Q. Your guiding principle in all this, as far as how  
5 to make a decision as a juror, what is that guiding  
6 principle for you? What's the one thing you look at to base  
7 your decision on?

8 A. All the evidence.

9 Q. That's right. You said two things that were good.  
10 One, you said evidence, right?

11 A. Right.

12 Q. You didn't say anger, did you?

13 A. No.

14 Q. I know you shook your head, but she's got to take  
15 it down.

16 You didn't say emotion?

17 A. No, I didn't.

18 Q. You didn't say some thirst for revenge?

19 A. No.

20 Q. You said it was evidence.

21 And the second thing that was important was,  
22 you said all the evidence, right?

23 A. Yes.

24 Q. Because you, as a juror, have that responsibility,  
25 that obligation, and opportunity to see all the evidence in

1 the case.

2 Now, we can't talk about it here, and we talk  
3 a lot in hypotheticals and pretend cases and what ifs. And  
4 interestingly, we have to go down the whole line. I mean,  
5 we've got to get all the way as if you're on a jury, and  
6 you've found somebody guilty.

7 And you're going to hear strange questions  
8 from lawyers making it almost seem like you've already found  
9 either this defendant or another defendant guilty. And the  
10 weird thing is, this just has to do with what would happen  
11 if you're a juror in some case.

12 You see how that works?

13 A. Yes, sir.

14 Q. We're not talking about Mr. Beatty; we're not  
15 talking about me or you or anybody else, okay?

16 A. Yes.

17 Q. Now, when you say "consider all the evidence" as  
18 your guiding principle, do you agree with me that using your  
19 imagination as a substitute for evidence is a bad idea?

20 A. I would think so, yes, sir.

21 Q. In fact, the more you use your imagination to fill  
22 in a gaps, the closer you get to making a mistake on a case.

23 A. Yes.

24 Q. That's why the Judge will instruct you that you're  
25 going to make a decision from all the evidence properly

1 admitted before you. And if you can continue to hold that  
2 as your firm grip, then let the evidence take you down  
3 whatever road it does, then the law says you may be  
4 qualified to be a juror, okay?

5 A. Right.

6 Q. Does that seem right to you, though?

7 A. Yes, sir.

8 Q. You wouldn't want a juror that kind of looks at  
9 part of the evidence or just the parts that he wants to see;  
10 he actually considers all of it, right?

11 A. Yes, sir.

12 Q. Interestingly, you get to consider all the  
13 evidence, and some of it you can disregard.

14 Now, obviously, when somebody stands up there  
15 and takes a witness oath to tell the truth, you would like  
16 to think that they are telling the truth, right?

17 A. Yes, sir.

18 Q. That's not always the way case, though; would you  
19 agree with me?

20 A. I would probably agree with that.

21 Q. And there's kind of two different reasons for  
22 that, isn't there? One of them is they're just flat lying;  
23 would you agree?

24 A. Yes, sir.

25 Q. The second is they may just be wrong, right?

1 A. Yes, sir, could be.

2 Q. Just because someone says something from the  
3 witness stand that's not true doesn't necessarily mean that  
4 they are telling a lie. Would you agree with me?

5 A. Yes, sir.

6 Q. And you get to be the juror. If you're a juror,  
7 you get to be on the lookout for that. You get to decide,  
8 "You know, I know that juror said this or that witness said  
9 this. I don't believe he's right. Either he's lying or  
10 he's wrong, but I'm going to listen to it." And you get to  
11 decide that for yourself.

12 Does that sound like a good idea?

13 A. Yes, sir.

14 Q. The Judge, the prosecutor, the Defense, nobody  
15 gets to tell you what weight to give to different witnesses  
16 in evidence, and that's the way it needs to be. And you  
17 kind of want it that way, don't you?

18 A. Yes, sir.

19 Q. Now, I'm going to touch on some things, because  
20 it's the nature of the case we're at and the nature of the  
21 case that we're talking about.

22 You know, I disagree with Mr. Harrison in  
23 this respect: He said let's talk about the punishment phase  
24 because that's why we're here. Well, the reality of it is,  
25 we're actually here to figure out whether or not this is the

1 best case for you to be on the jury.

2 Would you agree with me?

3 A. Yes, sir.

4 Q. And when we talk about a case involving an  
5 allegation of capital murder, I need to explain to you what  
6 it means to be charged with a crime as a result of  
7 somebody's death in Texas, okay?

8 A. Okay.

9 Q. You can actually cause somebody's death in lots of  
10 different ways, and a lot of it has to do with what's going  
11 on in the mind of the person that causes the death. I'm  
12 going to expound on that.

13 There is something called a culpable mental  
14 state, a lot of legal stuff, and I've read it and don't  
15 understand, so I'll try to put it in terms I can understand.  
16 Hopefully, together we'll have a meeting of the mind.

17 The first level in your mind has to do with  
18 negligence. Somebody ought to be aware of something, but  
19 they're not. The example I use, if you're driving down the  
20 street and you blow a red light, you run through and hit  
21 somebody. I mean, you may not have ever seen the red light,  
22 but it's your job to see it.

23 A. Yes, sir.

24 Q. You were just negligent about looking at it. You  
25 work up the chain a little bit, as it goes to, in your mind,

1 whether you're actually reckless about something.

2 Now, that's the situation that says,  
3 essentially -- and there may be a legal definition given to  
4 you, which really follows up. That's where you may see a  
5 red light and say to yourself, "You know, I know if I go  
6 through that red light, there is a risk that I could hit  
7 somebody, but I think I can make it, and I'm going to  
8 consciously disregard that risk. I'm going through the  
9 light."

10 Then you do so, and you run into somebody,  
11 you hurt them, kill them, whatnot. But that's a different  
12 level, and you can see it kind of moves up the chain a  
13 little bit as far as responsibility goes.

14 A. Yes, sir.

15 Q. The last one has to do with -- and these are  
16 together, but they're similar terms, different technically,  
17 but basically the same. One is intentionally and knowingly.  
18 One means you just intend the result. The other means  
19 you're consciously aware of the circumstances surrounding  
20 your conduct.

21 But it's the highest level in Texas of your  
22 culpable mental state, okay?

23 A. Yes, sir.

24 Q. So those are, basically, the three mental states.  
25 Let's put it where the rubber meets the road on this issue.

1 If you're going to cause somebody's death in Texas, there is  
2 actually a statute for each one. If you do so with  
3 negligence, there is something called criminally negligent  
4 homicide. It's a state jail felony, the lowest of the  
5 felonies.

6 But you work up the chain to the higher  
7 mental state. You've got recklessness. Now, there's  
8 nothing called reckless homicide; it's called manslaughter,  
9 okay?

10 A. Okay.

11 Q. If you cause somebody's death by being reckless.

12 And then, obviously, there's the intentional  
13 or knowingly cause of somebody's death; that is cold murder,  
14 okay? And that's the three different kinds.

15 Now, before you came in last Thursday, did  
16 you have any idea how the Texas capital sentencing scheme  
17 works?

18 A. Just a little bit.

19 Q. Where did you learn that from?

20 A. Probably newspapers and just reading what happens  
21 to people when they get convicted.

22 Q. Hey, have you heard things about special issues  
23 and questions like that?

24 A. Yes, sir.

25 Q. You may know a little bit something more than some

1 people about how that works. Would you agree with me?

2 A. Maybe, yeah.

3 Q. Did you ever think that if somebody committed a  
4 first degree murder, that one we've discussed, intentionally  
5 or knowingly, that depending on how bad that is, the facts  
6 of that case -- you know, you hear the example Mr. Harrison  
7 gave about how bad somebody can be to somebody else on a  
8 regular -- if there is such a thing -- murder. Did you ever  
9 think that somebody could get the death penalty for that?

10 A. No.

11 Q. You always knew that there had to be actually a  
12 second crime proven?

13 A. Well, I knew there was just a few things that you  
14 can get charged for capital murder for.

15 Q. Right. And they've got like this laundry list,  
16 and I want to touch on that, because out of all the  
17 different things, the only one that's applying to the  
18 questions we're going to ask has to do with if you commit a  
19 murder in the course of committing another offense, whether  
20 it be burglary or robbery, okay?

21 A. Yes, sir.

22 Q. Now, in Texas -- and I'm going to do some jumping  
23 around, but it all folds in, so bear with me.

24 The burden of proof being on the State, they  
25 actually have to prove, to make it a capital murder, two



1 different crimes. You follow me on that?

2 A. Yes, sir.

3 Q. They have to prove, number one, an intentional  
4 murder, okay?

5 A. Okay.

6 Q. That's the first thing. And that's beyond a  
7 reasonable doubt. They've got to follow that burden, okay?

8 In addition to that, they've also got to  
9 prove a second crime, whether it be robbery, burglary, ones  
10 along those lines. But there's an additional element on  
11 this, and that is they've got to prove that the second one  
12 I've just discussed actually occurred in the course of  
13 committing the murder.

14 Now, that's kind of a legal term, but there  
15 are definitions to it, and it's pretty clear, in the course  
16 of committing. We try to give examples to accentuate or  
17 explain to everybody that they've got to be connected.

18 In your mind, you've got to be satisfied,  
19 before you can ever find somebody guilty of capital murder,  
20 that the State has met the burden of proving both those  
21 crimes and that they happened in the course of one another.

22 You understand that?

23 A. Yes, sir.

24 Q. If they fail, if the State fails -- I know they  
25 say by an indictment -- if you're on a capital murder jury,

1 we say the evidence leads all the way to capital murder, but  
2 you, as a juror, get to decide, "I don't think the evidence  
3 leads that far." It may lead to a murder maybe; it may just  
4 lead to manslaughter, okay?

5 A. Right.

6 Q. It may lead to just a murder; it doesn't lead to  
7 the other. So it can go anywhere you think it goes, as a  
8 juror, after you look at all the evidence, okay?

9 The example Mr. Harrison gave is that if  
10 there was a capital murder case and you're a juror on a  
11 jury, and there has been evidence or an allegation of a  
12 murder in the course of a sexual assault, and you hear  
13 evidence that there was a murder, but you don't hear any  
14 evidence at all about a sexual assault, then you've got to  
15 find somebody not guilty of the capital murder, right?

16 A. Yes, sir.

17 Q. I'm going to go even further. And, again, this  
18 comes to tweaking your thinking. Not only is it that you  
19 don't have to hear any, there could be a whole bunch of  
20 evidence of sexual assault, but in your mind, if it doesn't  
21 rise to the level of beyond a reasonable doubt, what do you  
22 do?

23 A. Not guilty.

24 Q. That's right. You may hear allegations,  
25 innuendos, whatever kind of evidence you may want, of a

1 sexual assault, but in the final analysis, you may just  
2 decide they didn't get there on that, and for whatever  
3 reason, you, as a juror, get to decide that, because you,  
4 again, are interviewing for the job in a criminal case,  
5 okay?

6 Do you think it's appropriate that the burden  
7 of proof ought to be on the State to prove both a murder and  
8 an associated crime?

9 A. Yes.

10 Q. Do you think they should have to prove this  
11 connection? In the course of committing, do you think they  
12 should have to prove that beyond a reasonable doubt as well?

13 A. Yes.

14 Q. Some people think, "Well, I think they should have  
15 to prove it's more likely than not that that would happen in  
16 the course of committing."

17 What do you think about that?

18 A. No. I think they need to prove their case.

19 Q. It's been defined in the law that conduct  
20 occurring in attempting to commit, during the commission, or  
21 the immediate flight after the intent of the commission of  
22 the offense, that's in the course of it, okay?

23 There's also a legal definition that talked  
24 about when does the intent to commit murder have to be  
25 formed, and the law says the intent to commit the offense

1 must be formed prior to or concurrently with the murder.

2 Here's the example: I go into a convenience  
3 store. And when you think of a classic robbery capital  
4 murder, have you ever heard on TV about the convenience  
5 store robbery where the clerk gets shot?

6 A. Yes.

7 Q. I'm going to put some hair on that story for you.

8 Pretend that I walk into the convenience  
9 store, and Mr. Perkins is the clerk. And for whatever  
10 reason -- if you knew Mr. Perkins, you'd know I'd be arguing  
11 with him, and we get into just an arguing contest.

12 It has nothing to do with money; it has  
13 nothing to do with merchandise. I just get mad at him, and  
14 one thing leads to another, and I pull out a pistol and  
15 shoot him as dead as a hammer, okay?

16 That by itself, murder or capital murder,  
17 based upon what you learned today?

18 A. Murder.

19 Q. Yeah. There is no underlying felony there, is  
20 there?

21 A. No.

22 Q. Now, let's say I leave the store, and I go back,  
23 and as I'm leaving the store, I go, "You know what? In  
24 about 15 minutes, I know somebody is going to go over there  
25 and see what I did."

1 I know everybody left afterwards. I'm going  
2 to try to sneak back over there and get me a Diet Coke,  
3 maybe all the money in the till, whatever, long after I  
4 actually committed the murder."

5 There's a big separation in time and in the  
6 connection. Can you see the difference between that and in  
7 the course of committing?

8 A. Yes, sir.

9 Q. And that's what the law contemplates. You've got  
10 to be able to figure out in your mind, "Do I think" -- based  
11 on the hypothetical I'm giving you or any case where you're  
12 a juror, "Do I think they've proven to me beyond any  
13 reasonable doubt that these two things happened one in the  
14 course of the other?" And that's capital murder in Texas.

15 Do you agree that there ought to be that  
16 connection?

17 A. Yes, sir.

18 Q. Do you agree that there should not be the death  
19 penalty for just -- if you can say such a thing, just a  
20 murder case?

21 A. Yes, I do.

22 Q. You kind of gave me the half nod, and I've seen  
23 that before.

24 A. Yeah.

25 Q. That means there have been times that you've been

1 thinking about specific murders which may be real bad or  
2 whatever, where it may have been appropriate in your mind.

3 Tell me why you gave me the half nod.

4 A. Well, just for what you said right there, where  
5 somebody has killed somebody in a bad case, and it's not  
6 capital murder; it's just murder.

7 Q. Okay. Now, that gets me to the point that flows  
8 out of this. I'm going to relate to our conversation a  
9 while ago about the evidence in the case being your guiding  
10 principle, not anger and emotion.

11 Let's say, if you're a juror in a capital  
12 murder case, and you hear the same fact situation that  
13 Mr. Harrison laid out about killing Mr. Bingham, and it was  
14 just an awful killing, I mean, it was the worst you could  
15 imagine, okay, and it inflames you, it incenses you, it's  
16 the kind of thing that before you learned about how to do  
17 capital murder cases, you would have thought would have  
18 deserved the death penalty, in my case that I gave you an  
19 example of me and Mr. Perkins, let's say I was just as bad  
20 to him, I was awful, I mean, just the worst that you could  
21 imagine, he's got a family, he's never going to see his  
22 little girl again, and his pretty wife is going to be  
23 without a husband, a girl without a father, and I'm just  
24 awful doing that, but all of a sudden, you're looking at the  
25 evidence, and in your mind, as a juror, you have a

1 reasonable doubt about the connection.

2 A. Right.

3 Q. Now, here's where the rubber meets the road.

4 Would the fact that the killing itself in our hypothetical  
5 here was so bad, would that tend to make you short-skip that  
6 requirement about proving the connection to the underlying  
7 robbery?

8 A. I would hope not. I would seriously hope not. It  
9 could.

10 Q. Say that again.

11 A. I said it probably could, but I would like, again,  
12 hear the evidence and decide for myself.

13 Q. Well, and that's why I'm having to give you these  
14 pretend cases, because we're not going to say tell me about  
15 this case and us just do a pretend trial today about any  
16 specific case.

17 A. Yes, sir.

18 Q. We have to prepare for any possibility, and the  
19 law says you kind of have to be prepared for those  
20 possibilities. And one thing I like about your answers  
21 you're giving us is you're kind of thinking. You'll half  
22 nod your head once in a while when you're thinking about  
23 things, and I want to know the answers because we've got to  
24 delve in here.

25 In a hypothetical case, there's just an awful

1 murder case, just awful the way that I've described it today  
2 with me and Mr. Perkins or with Mr. Bingham or Mr. Harrison,  
3 whatever.

4 And after the evidence in the case that  
5 you're on a jury, whatever case that is, you in your heart  
6 of hearts do have this reasonable doubt about the connection  
7 because you just don't think they've proven it.

8 But then you say to yourself, "Man, that's  
9 such an awful killing. I've got to find him guilty of  
10 capital murder anyway. It's just a bad enough killing."

11 Can you see that happening to you?

12 A. No.

13 Q. Okay. When you say it might or it could, tell me  
14 some of your thoughts on that.

15 A. Well, if you had any doubt at all, like you said,  
16 if they didn't prove their case above a reasonable doubt,  
17 then that's it.

18 Q. Would that lower the bar for the State on proving  
19 the connection "in the course of committing" to you --

20 A. No.

21 Q. -- if the underlying killing, the murder, was just  
22 an awful fact scenario?

23 A. No.

24 Q. All right. Now, I'm going to really add some hair  
25 to this story. We've talked a little bit about the



1 punishment range, obviously, in a murder case, okay? It's a  
2 first degree murder, five to life. And you know the  
3 concepts of death penalty case. If you find him guilty of  
4 capital murder, death or life.

5 And you made the promise, I'm thinking, that  
6 you could not let the State lower this bar. The bar stays  
7 at reasonable doubt on connecting the two crimes.

8 You would do that, right?

9 A. Yes, sir.

10 Q. Let's say in your mind you have a reasonable doubt  
11 about it, so you find somebody guilty of murder.

12 A. Okay.

13 Q. You say there is a reasonable doubt in your mind,  
14 so this person that you're on the jury of is guilty of  
15 murder, okay?

16 But then all of a sudden, there is evidence  
17 in your mind or being presented to you, so you have a doubt  
18 in your mind. You know what? This might not even be a  
19 murder in the case that you're a juror on. This might  
20 actually be a manslaughter. This might be a reckless  
21 killing.

22 Well, you know, now knowing the punishment  
23 range business, you know that two to twenty, two years on  
24 the low ends, twenty years on the high end, is what a second  
25 degree manslaughter gets you.

1                   And you hear this fact scenario, and you're  
2 like, "Wow, this is a bad deal." And you can have an honest  
3 question in your mind. Is he guilty of the greater offense  
4 of murder or the lesser offense of manslaughter, if you're  
5 the juror in some case.

6           A.    Yes, sir.

7           Q.    If you have a doubt about which two, which one do  
8 you find somebody guilty of, the greater or the lesser?

9           A.    I don't really know because I hadn't heard the  
10 facts.

11          Q.    Well, I'm going to add some facts to you.

12          A.    Okay.

13          Q.    Let's say that whatever the case is, you have  
14 heard the facts, and you're sitting back there. You've  
15 already deliberated a good long time, a proper time, and  
16 you, in your mind, now are satisfied.

17                   "I've got a reasonable doubt about whether  
18 he's guilty of the greater offense. He might have committed  
19 the lesser. I'm not sure which. He either committed the  
20 greater or the lesser, one or the other."

21                   And you have a reasonable doubt about which  
22 of either he's guilty of. How do you resolve that doubt?

23          A.    Well, if I didn't think he was guilty of the  
24 greater and I think he's guilty of the lesser, then that's  
25 the road I would go down.

1 Q. What if you're just not sure which; that's a tie  
2 to you?

3 A. I don't know.

4 Q. If the Judge instructs you that if you have a  
5 reasonable doubt about whether an individual is guilty of  
6 either the greater offense or the lesser offense, you should  
7 resolve that doubt in favor of the defendant. Would you  
8 agree with that?

9 A. Yes, sir.

10 Q. So if it's a tie, it goes to who? The State or  
11 the Defense?

12 A. The Defense.

13 Q. Could you do that?

14 A. Yes.

15 Q. What if you discover that the offense you actually  
16 think the defendant is guilty of in any case you're a juror,  
17 it doesn't carry enough punishment in your mind for what  
18 should happen?

19 MR. HARRISON: Judge, I'm going to object  
20 only to the form of this question, because it hinged on a  
21 prior question where he related it to a set of facts, a  
22 horrendous murder case, a horrendous set of facts.

23 So he's applying a specific fact or set of  
24 facts for this question. That's my only objection.

25 THE COURT: Well, I'm sure that was a good

1 objection. I'm not real sure I understand exactly what the  
2 objection goes to.

3 Let me just get Mr. Hawk to rephrase that  
4 question. Let me listen to that question again. I'm not  
5 sure --

6 Q. (By Mr. Hawk) And I think I see what his objection  
7 is, and I'm going to clear it up to you.

8 A. Okay.

9 Q. Any old case. I don't know what case you're a  
10 juror on, but let's just say you're a juror on a case. And  
11 there is a multiple choice thing here. You've got a bunch  
12 of different offenses that the defendant -- you know, he's  
13 charged with one.

14 It could be a lesser. It could be the lesser  
15 of that. You've two or three to choose from. Your job is  
16 to look at all the evidence, like you said, and decide,  
17 okay?

18 A. Yes, sir.

19 Q. Let's say, in your mind, you have deliberated and  
20 heard all the evidence in some case, and you know in your  
21 mind now, "Okay. I now know what the defendant is guilty  
22 of. I know what they've charged him with. He may or may  
23 not be guilty of that. I know about the lesser. He may or  
24 may not be guilty of that. I know about the lesser after  
25 that."

1                   And you know them all, but let's say you have  
2 decided, "I know the State has proven the defendant guilty  
3 in some case guilty beyond a reasonable doubt of this lesser  
4 crime," whatever that is, okay? But then you realize not  
5 enough punishment, based upon what the law is. "Well, if I  
6 find him guilty of this, I can only do certain things to  
7 him."

8                   If that ever was to happen to you, how do you  
9 resolve that in your mind?

10           A.     Give him the maximum of the maximum for whatever  
11 the law says.

12                   MR. HARRISON: Judge, let me interpose an  
13 objection as to Mr. Hawk putting in "in the mind." I think,  
14 if I heard it correctly, he's put in the mind of the juror  
15 that he is -- that he, as a juror, would believe that there  
16 is not enough punishment in the case. I believe that was a  
17 fact that he is now interjecting into this fact scenario.

18                   MR. HAWK: It actually is the fact, because I  
19 want to find about range of punishment, and actually, I  
20 think he answered it for me.

21                   THE COURT: Well, I think he did, too,  
22 because -- I don't want to put words in his mouth, in his  
23 answer, but I think what Mr. Hawk is asking you is, for  
24 the -- you've already said you will convict the defendant  
25 only of the offense you believe the State has proven him

1 guilty of, correct?

2 VENIREPERSON PEARSON: Yes, sir.

3 THE COURT: Then for that offense that you  
4 convict him of that you believe the State has proven him  
5 guilty of, there is a range of punishment for that offense.

6 VENIREPERSON PEARSON: Yes, sir.

7 THE COURT: So the question becomes,  
8 regardless of what the range of punishment might have been  
9 for a higher offense that you did not convict him of, can  
10 you keep your mind open and consider the full range of  
11 punishment for the offense that you found him guilty of --

12 VENIREPERSON PEARSON: Right.

13 THE COURT: -- and assess a sentence within  
14 the full range of punishment only for the offense that  
15 you've convicted him of?

16 VENIREPERSON PEARSON: Yes. And he said, did  
17 I feel like that -- was there enough punishment --

18 THE COURT: Right.

19 VENIREPERSON PEARSON: -- for the crime,  
20 right.

21 THE COURT: And so if you find him guilty of  
22 what Mr. Hawk's referred to as, I believe, a lesser included  
23 offense, because you don't think the State proved a higher  
24 offense, can you simply keep your mind open and assess a  
25 punishment within the full range of punishment for the

1 offense you've convicted him of, regardless of what the  
2 punishment might be for a higher offense that you did not  
3 convict him of?

4 VENIREPERSON PEARSON: Yes, sir.

5 THE COURT: Can you do that?

6 VENIREPERSON PEARSON: Yes, sir.

7 THE COURT: Okay. And you can keep going if  
8 you want to.

9 MR. HAWK: No. I think he's answered the  
10 question.

11 Q. (By Mr. Hawk) I guess the bottom line is, you  
12 would sure make the commitment to find the defendant guilty  
13 of only what he was guilty of?

14 A. Yes, sir.

15 Q. You wouldn't manufacture a different guilty  
16 verdict just to kind of get a punishment range you like?

17 A. No.

18 Q. What does it mean to you -- when you hear the  
19 phrase "burglary," what do you think of?

20 A. Somebody breaking into your house or your  
21 business.

22 Q. In their own house or in your house?

23 A. Any house.

24 Q. Even their home?

25 A. Their own house?

1 Q. Right.

2 A. I don't think you can burglarize your own house.

3 Q. Well, how about robbery? What do you think when  
4 you think of robbery?

5 A. Somebody taking something off of somebody else,  
6 stealing from them.

7 Q. Yeah. What does somebody -- in your mind, when  
8 somebody robs somebody, what do they do afterwards?

9 A. What would they do after they rob them?

10 Q. Yeah. A classic situation, when you think here's  
11 a robbery, what's your classic situation of what a robbery  
12 is? What does the person do afterwards?

13 A. When somebody takes somebody's money.

14 Q. What do they do after that?

15 A. Probably go buy drugs with it, if they're a  
16 robber.

17 Q. Don't hang around, though, do they?

18 A. No.

19 Q. Those are the four different kinds of offenses  
20 that we've talked about, the criminally negligent homicide,  
21 if I can say that right, manslaughter, murder, and the  
22 capital murder.

23 Do you think you've got a good handle on all  
24 four of those four different ones and what it takes to get  
25 to each one?



1 A. Yes, sir.

2 Q. Can you make the commitment that regardless of  
3 what the allegation is, that you would look at the proof and  
4 find any defendant that you're a juror on guilty of only  
5 what he starts with?

6 A. Yes.

7 Q. Okay. Now, when you came in here Thursday -- I'm  
8 going to ask you a gut-check question -- did you look over  
9 at Tracy Beatty and say, "What did he do?"

10 A. Yes, I did.

11 Q. I mean, that makes sense, though, doesn't it?

12 A. Yes, sir.

13 Q. Natural to do that. Would you agree with me?

14 A. Yes, sir.

15 Q. It's difficult to put meaning into the concept of  
16 presumption of innocence because, in our society -- and you  
17 hear on TV oftentimes so-and-so is charged with a crime,  
18 right? And oftentimes, the media and the like doesn't  
19 necessarily stick around for the follow-up, do they?

20 A. No, they don't.

21 Q. It's the headline that gets it. Then afterwards  
22 whatever happens, someone has to go find out about. Would  
23 you agree with that?

24 A. Yes, sir.

25 Q. And as a result of that is many people in our

1 society have the same feeling. Me included, by the way, and  
2 I'm sure by everybody in here. "What did he do?"

3 To give true meaning to the concept of  
4 presumption of innocence, what I'm going to ask you is, are  
5 you able to intellectually, in your mind, to say it's normal  
6 to ask, "What did he do?"

7 A. Yes.

8 Q. "But I promise to the Judge to follow his  
9 instructions, to say, you know, until and unless the State  
10 brings forth evidence, he didn't do anything wrong."

11 A. That is correct.

12 Q. Can you make that commitment?

13 A. Yes.

14 Q. It is a little bit of mental gymnastics, though,  
15 isn't it?

16 A. Yes, it is.

17 Q. If anyone was sitting as a defendant in a case,  
18 our country says that we're entitled to that. And way back  
19 in the day when you were younger, making foolish decisions,  
20 you were also entitled to that same thing, right?

21 A. Yes, sir.

22 Q. On your -- you know, slang for -- we call it CCH  
23 or criminal history, whatever it is, did you -- you had said  
24 to us that you got arrested for possession of marijuana?

25 A. Yes, sir.

1 Q. How many times? Did you have one or two? How  
2 many did you have of those?

3 A. One, I think -- one, two -- no -- well, one, but  
4 it was a long, long time ago, back when I was in high  
5 school, and that was -- so I didn't count it. I think it  
6 was thrown out anyway. I'm not even sure, to be honest with  
7 you.

8 Q. Okay. You also have that same presumption, that  
9 same starting place ahead of the game or not guilty to begin  
10 with, right?

11 A. Yes, sir.

12 Q. I mean, everybody does. This is a famous trick  
13 question. If you had to vote this minute on any case you  
14 were a juror on, before you heard any evidence, how do you  
15 vote? Guilty, not guilty, or need more evidence?

16 A. Not guilty. Well, I need more evidence.

17 Q. Well, you see, you had it there until you told me  
18 the trick. The trick is, if there's not any evidence at  
19 all, then he starts not guilty. So he is not guilty, right?

20 A. Right.

21 Q. And that has to do on every single element of an  
22 indictment. Would you agree with me?

23 A. Yes, sir.

24 Q. The State has to prove all evidence. If there are  
25 ten elements to a crime, they've got to prove all ten.

1 Would you agree with me?

2 A. Yes, sir.

3 Q. If they skip one or don't get there for you on a  
4 specific element, could you find somebody -- in your mind,  
5 if you're a juror, and they hadn't proved that element to  
6 you beyond a reasonable doubt, could you find somebody not  
7 guilty?

8 A. Yes, sir.

9 Q. And where the rubber meets the road on a case  
10 involving allegations of a capital murder, has to do not  
11 only with the underlying murder but also with that second  
12 independent crime, right?

13 A. Yes, sir.

14 Q. And the connection.

15 A. Right.

16 Q. What do you think is worse? Setting a guilty  
17 person free or an innocent person to prison? Which is  
18 worse?

19 A. Probably sending somebody that's not guilty to  
20 prison.

21 Q. Okay. Now, this is a harder question. What's  
22 worse? Sending somebody who's not guilty to prison or  
23 convicting somebody of a greater crime than they actually  
24 did?

25 A. Sending somebody to prison.

1 Q. You see how that kind of falls in order?

2 A. Yes, sir.

3 Q. Do you agree with me that none of those are good  
4 results? Right?

5 A. I absolutely agree.

6 Q. One of the last things that I'm going to steer  
7 toward in the concept of trial procedure has to do with what  
8 reasonable doubt is. And years ago, there was no  
9 definition. Then they added one. It did nothing but  
10 confuse people, and then they took it away again.

11 And the reason they did it is because, I'm  
12 guessing, they want the jurors to decide. That's what the  
13 law says. And a reasonable doubt is whatever you want it to  
14 be.

15 Now, can you live with that? Do you like  
16 that?

17 A. Yes, sir.

18 Q. When I say live with it, obviously, we all have to  
19 live with it. That's the law. The question is, do you  
20 agree with it?

21 A. Yes, sir.

22 Q. Do you think you need to have some definition to  
23 tell you what a reasonable doubt is?

24 A. Yes.

25 Q. Okay. Do you think you should be told from a

1 court what a reasonable doubt is by definition?

2 A. Yes.

3 Q. What happens if you're not told by the Court the  
4 definition of reasonable doubt? How are you going to handle  
5 that?

6 A. I would just look at the evidence and decide for  
7 myself.

8 Q. Okay. And a reasonable doubt, to me, may be a lot  
9 different than what Mr. Perkins' reasonable doubt is or even  
10 different than Mr. Harrison's or Mr. Bingham's or anyone in  
11 here.

12 A. I understand that.

13 Q. But if you come to be a juror, whatever that level  
14 is, you get to decide that.

15 A. Yes.

16 Q. Okay. It's opportunity and challenge all at once.  
17 You think you can do that?

18 A. Yes, sir.

19 Q. Okay. And obviously, when we look at burdens of  
20 proof, there are lower ones of probable cause and clear and  
21 convincing, but a reasonable doubt, that's left up to you.  
22 And let's save it for the clear-cut cases. You get to  
23 decide what that is in every element of the case.

24 You see how that loops back around?

25 A. Yes, sir.

1 Q. Do you think that if a defendant does not testify  
2 in a criminal case, that the State's case gets better?

3 A. Yes.

4 Q. Why?

5 A. Because I would feel like he's hiding something.

6 Q. That makes sense, doesn't it?

7 A. Yes, sir.

8 Q. You always expect to hear from a defendant or from  
9 anyone it is who has gotten the finger pointed at him?

10 A. Yes, sir.

11 Q. Are you familiar with, on TV, this Kenneth Lay guy  
12 who is the former CEO of Enron?

13 A. Yes, sir.

14 Q. Now, he's come out swinging in the media, hadn't  
15 he?

16 A. Yes, he has.

17 Q. I see you don't have kids. And you can compel  
18 their testimony, because everyone, naturally, wants to hear  
19 both sides of the story, right?

20 A. (Nods head affirmatively.)

21 Q. I see you're nodding your head again.

22 A. Yes, sir.

23 Q. This is one of those things to where I want to  
24 follow up on, because it makes a lot of sense, and I want to  
25 delve into it some.

1           The Judge may end up telling you you just  
2 can't consider that at all. Now, that's where the rubber is  
3 going to meet the road.

4           A. I understand.

5           Q. Because just like it's easy and natural for people  
6 to say, "Well, what did he do," it's just as natural for  
7 them to say, "I need to hear from this guy in any case."

8           The only challenge to the fact is, no one  
9 knows before you become a juror whether or not a defendant  
10 is going to testify. No one knows that. And what I want to  
11 figure out is, do you feel -- well, I'm just going to ask  
12 you. Why do you feel a defendant might be hiding something  
13 if they don't testify?

14          A. I just feel like if he -- if he did testify, then  
15 get it out in the open. Get it out in the open. What's he  
16 got to hide it? What's he hiding?

17          Q. Right. It makes him look a little guilty when he  
18 doesn't testify, doesn't it?

19          A. Yes, sir.

20          Q. And there is not much I can do to change your mind  
21 on that, is there?

22          A. Oh, you probably can being -- you know, the Court  
23 and the law and seeing so many cases.

24          Q. Okay. I guess where it really gets down to it is,  
25 if the Judge instructed you that you can't consider it that



1 way and you can't use it as a circumstance against him,  
2 could you follow that instruction?

3 A. I would, yes, sir. I would like to think I could.

4 Q. And that's fair. I'm not going to make you --  
5 that's one of my favorite things that I've heard before, and  
6 I like saying it. It never comes out when I do.

7 Judge Skeen here can tell me, "Mr. Hawk, I'm  
8 ordering you -- here are your instructions. Why don't you  
9 go ahead and run through that wall behind you. Give it your  
10 best shot, but you'd better do it."

11 And I might want to and maybe even try to,  
12 but the reality is I know my size, I know that wall's  
13 strength, and as much as I'd like to follow it, my  
14 conscience tells me I just can't do it. I mean, I'd like  
15 to; I just can't.

16 That's where we're getting to with this  
17 specific issue. It's a little easier for someone to say,  
18 "What did he do?"

19 "Okay. I can start out here and presume him  
20 not guilty. I can see that." Lots of people can make that  
21 mental gymnastics. It gets a lot harder, though, for people  
22 to honestly say, "If he doesn't testify, I'm not going to  
23 think he's guilty even a little bit."

24 It's a lot more difficult. Many people can;  
25 most can't. It just depends on who you talk to.

1 Which side of the camp do you fall on, if the  
2 Judge gives you that instruction? Can you do it in your  
3 heart of hearts, or in your heart of hearts, are you one  
4 that says, "You know, truthfully, if he doesn't testify,  
5 that's going to hurt him?" What do you say?

6 A. I would say if he doesn't testify, it would  
7 probably hurt him.

8 Q. Any question about that really in your mind?

9 A. No, not really.

10 Q. Now, the answer that you gave me, I am guessing,  
11 is, even in the face of -- if the Judge instructed you and  
12 you're instructed that the defendant doesn't testify you're  
13 not to use that as circumstance against him, even in the  
14 face of that instruction, I'm guessing your answer is still  
15 the same, is it not?

16 A. Well, if after hearing the evidence, maybe I would  
17 understand why he didn't want to testify.

18 Q. Now, interestingly, this is one of those chicken  
19 or the egg things where at the very end, you may say to  
20 yourself, "Well, now I know why he didn't."

21 But the trick is -- and I think Mr. Harrison  
22 made reference to this -- the decisions we make about what  
23 we're able to do as individual jurors, we have to make those  
24 decisions not knowing anything at all about how it's going  
25 to come out, what the evidence is going to be or not going

1 to be, okay? It may come out that if he does or doesn't  
2 testify, you have different attitudes about why not.

3 The question becomes -- I mean, honestly, as  
4 what you referred to before -- if it comes to pass in any  
5 case in which you're a juror on, you've got to make a call,  
6 "I can't do it."

7 And your heart is better than mine. I'm not  
8 going to try to railroad you into saying something you don't  
9 want to say. But if you think that as a general rule, in  
10 your mind and in your heart, if he doesn't testify and  
11 that's going to hurt him, that's what we need to know.

12 Now is really the only time we can. We can't  
13 wait until afterwards.

14 A. Right. No. I don't think it will have any  
15 bearing whether or not he testified, but that would be after  
16 hearing the evidence.

17 Q. How about before?

18 A. No. It wouldn't -- that's his business if he  
19 wants to testify or not.

20 Q. Now, I'm going to try to pick with you some.

21 A. Okay.

22 Q. A few minutes ago, you kind of got quiet and you  
23 said, "You know, if he doesn't testify, that's going to hurt  
24 him." And now you're saying, "Well, you know, that's his  
25 business." You see how that --

1           A.    Yeah. But you asked me if I would be -- if I  
2 thought he needed to do that, which, you know, if he does --

3           Q.    And that is the question.

4           A.    Yeah.

5           Q.    As any --

6           A.    But I'm not going to hold it against anybody, if I  
7 listen to the evidence, whether or not he testified.

8           Q.    If a criminal defendant does not testify, does  
9 that make anything the State's witnesses say more  
10 believable?

11          A.    I don't really know about that. I would say it  
12 could; then again, it couldn't, depending on the case.

13          Q.    You're going to have to decide. This is one of  
14 those things about yeses and nos and maybes and hopefullys.

15          A.    Right.

16          Q.    Because you have to make your decision about what  
17 you're able to do as a juror.

18          A.    Yes, sir.

19          Q.    And like I said, it's not what you want to do, me  
20 running through a brick wall --

21                   MR. HARRISON: Judge, I hate to interrupt,  
22 but I'm going to object to that as a commitment question,  
23 putting in a specific fact of the defendant not testifying  
24 and how that would relate to the venireman's giving  
25 credibility to other witnesses. That's fact specific, and

1 that's a commitment question.

2 MR. HAWK: Judge, the law is clear on this  
3 part. I'm able to ask that very question.

4 THE COURT: Well, Mr. Hawk, also, would you  
5 be sure that he understands it's not what the Court may  
6 instruct him; it's what the Court is going to instruct him  
7 in regard to?

8 Q. (By Mr. Hawk) Right. And we always use that "may"  
9 and "will," because everyone has got a pretty good idea,  
10 before a criminal trial starts, what the jury instructions  
11 are.

12 And in any every criminal trial in which the  
13 defendant does not testify, you will get the instruction  
14 that if the defendant does not testify, you cannot use that  
15 as any circumstance against him at all.

16 A. I understand.

17 Q. Now, regardless of facts, regardless whether they  
18 are good, bad, or somewhere in between, you've got to be  
19 able to make that commitment in every fact situation in your  
20 own mind, every one of them, regardless of the facts. It  
21 can never be taken as a circumstance --

22 A. Yes, sir.

23 Q. -- ever.

24 Now, you see where my challenge is with you?  
25 Because you said, "Well, it's going to depend on the

1 evidence," right?

2 A. Yes, sir.

3 Q. Is there ever a circumstance in your mind where  
4 you may actually take that as a circumstance against him?

5 A. That's such a wide open question, I, you know --

6 Q. Well, I'm going to ask the upside-down question.

7 A. Okay.

8 Q. And I'm going to refer to what you said to me a  
9 few minutes ago --

10 A. Okay.

11 Q. -- when you said, "If he doesn't testify, that's  
12 going to hurt him." My big question is, why would that hurt  
13 him?

14 A. Because you would feel like he had something to  
15 hide.

16 Q. So if a judge told you you can't think that way,  
17 can you change your thinking --

18 A. Yes, sir.

19 Q. -- and just disregard that entirely?

20 A. Yes.

21 Q. Back in the days past and when you were young and  
22 having those same troubles and being charged and going  
23 through the system, did you ever have a trial?

24 A. No.

25 Q. Because when we get down to where the rubber meets

1 the road -- and this is the -- I'm going to leave this  
2 subject alone and move to the next one -- I guess both the  
3 State and the defendant desperately want to be sure that  
4 regardless of the facts and circumstances, you could follow  
5 the law in every situation.

6 A. Yes, sir.

7 Q. And from our standpoint, if you say that there is  
8 some situation in your mind or it's going to hurt him, that  
9 runs a red flag like in front of a bull to any lawyer.

10 A. Yes, sir.

11 Q. But I've also heard you say things like, "Well, if  
12 the Judge instructs me not to let it affect my deliberation  
13 or not to be taken as a circumstance, I can follow that."

14 So I want you to check your gut for now, and  
15 in a little while, I'm going to circle back around and ask  
16 you, "Look, have you thought about this," and then I want to  
17 know your deep and honest answer, okay?

18 A. Okay.

19 Q. Now, I'm going to touch on something that  
20 Mr. Harrison touched on about what society means to you,  
21 okay?

22 A. Okay.

23 Q. This has to do with that special issue that we  
24 talked about a little while ago -- or he talked about, about  
25 is there a probability the defendant -- I think it's written

1 down up there -- would be a continuing threat to society.

2 You remember that?

3 A. Yes, sir.

4 Q. Now, you're not going to get a definition of that.

5 A. Okay.

6 Q. It gets to mean whatever you think it means, okay?

7 A. Okay.

8 Q. And I'm going to back that up against which you've  
9 learned and what I'm sure the instructions will tell about a  
10 life sentence being 40 years, calendar years, before  
11 consideration for parole. Whether you get it or not is a  
12 whole 'nother issue, okay?

13 There are two different camps on this thing.  
14 Some jurors think society is wherever you are, whether it's  
15 in a prison, out of prison, free world, or whatever, but  
16 you'll notice in the instruction, it doesn't say "free-world  
17 society" or "prison society"; it just says "society," right?

18 A. Yes, sir.

19 Q. Other jurors are like, "You know what? I might  
20 think it's the society where the free world is. I'll figure  
21 out whether I think, based on the evidence, he's going to be  
22 a danger when he gets out in 40 years."

23 You get to be the one that decides what  
24 society means. There's not going to be a definition.

25 A. Okay.



1 Q. Will you make the promise to the Judge to look at  
2 all the evidence and make that decision based upon what you  
3 think the evidence shows you based on the instructions that  
4 you get?

5 A. I'm going to do -- I'm going to do what the Judge  
6 says and follow the instructions.

7 Q. And that's all that anybody can ask you, right?

8 A. Yes.

9 Q. Whether my definition of society, yours or  
10 Mr. Harrison's or Mr. Bingham's or whoever's, yours is the  
11 one that makes a difference on a lot of different things,  
12 whether it's reasonable doubt, society, things of that  
13 nature, right?

14 A. Yes, sir.

15 Q. That's an opportunity and a responsibility, isn't  
16 it?

17 A. Yes, sir, it is.

18 Q. Can you meet that?

19 A. Yes, sir.

20 Q. Now, would you expect lawyers that are  
21 representing somebody who's charged with the kind of case  
22 that we're involved with -- and the allegation is -- they  
23 say the road leads all the way to capital murder, and, of  
24 course, everything underneath that kind of falls down --  
25 would you expect the lawyers to do the best they knew how to

1 do, object and plan and argue and closely cross-examine  
2 people?

3 A. Yes, sir.

4 Q. Would you hold it against the defendant if his  
5 lawyers acted a certain way?

6 A. No, sir.

7 Q. Because you can understand that sometimes things  
8 may happen. Jurors get to see it. And the big question is,  
9 if you don't like what I do, come on down and see me in my  
10 office and tell me to knock that business off, okay?

11 A. Yes, sir.

12 Q. Can you make that clear not to hold it against  
13 Mr. Beatty?

14 A. Yes.

15 Q. Now, I'm just about done talking to you. I'm  
16 going to ask you to circle back around to this business if  
17 Mr. Beatty or any defendant that you sit on, if he doesn't  
18 testify in any fact situation. Have you been thinking about  
19 that?

20 A. Yes, sir.

21 Q. If -- tell me what you're thinking.

22 A. I'm thinking if -- maybe -- like I say, I've never  
23 done this before. Maybe he's got a reason not to testify.  
24 I'm not going to hold it against him.

25 Q. What are some of those reasons?

1           A.     But if I were -- if I felt like -- if I could  
2     testify, I would want to get it out on the table and -- you  
3     know, and try to convince some people that I'm trying to  
4     help myself out.

5                     You see what I'm saying?

6           Q.     I do. What happens if you become a juror on a  
7     case and the evidence is over from the State and you say to  
8     yourself, "I can't wait to hear from the defendant," and  
9     then you find out the defendant doesn't testify, and you  
10    think he should have in any case that you're a juror? How's  
11    that going to affect your verdict?

12                   MR. HARRISON: Judge, I'm going to object.  
13    That's injecting the facts into it. It's an improper  
14    commitment question.

15                   MR. HAWK: It's actually a directly proper  
16    question, Judge. It's not a commitment to any specific set  
17    of facts. It's about his opinion of whether he can follow  
18    the law in a specific situation. And that's just not  
19    improper, Judge.

20                   MR. HARRISON: Judge, he's --

21                   THE COURT: And I'll allow Mr. Hawk to ask  
22    the venireperson if he -- if you get down to that point and  
23    the defendant does not testify, can you follow the Court's  
24    instructions and not consider it as any evidence of guilt  
25    against him if he does not testify?

1 Is that the question?

2 MR. HAWK: That's a great question.

3 THE COURT: In other words, if the State puts  
4 on all of its case, the State rests -- Defense has  
5 absolutely no burden. They may call witnesses; they may  
6 not. They have no burden. The Defense has no burden to  
7 prove anything -- and the Defense finishes its case, and the  
8 defendant has not testified, the instructions from this  
9 Court are going to tell you that if the defendant elects not  
10 to testify, that you cannot hold the defendant's election  
11 not to testify as any evidence of guilt whatsoever against  
12 him.

13 Can you do that?

14 VENIREPERSON PEARSON: Yes, sir.

15 THE COURT: And if the scenario develops like  
16 Mr. Hawk said, and the Defense goes all the way down through  
17 the end of its case, and the defendant has not testified,  
18 can you follow the Court's instructions, which you would get  
19 shortly after that, which would tell you that a defendant's  
20 election not to testify cannot be considered in the event --  
21 as any evidence of guilt against him?

22 Can you do that?

23 VENIREPERSON PEARSON: Yes, sir, I believe  
24 so.

25 THE COURT: Can you follow that Court's

1 instructions?

2 VENIREPERSON PEARSON: Yes, sir.

3 THE COURT: All right, sir.

4 Q. (By Mr. Hawk) Now, if that same instruction says  
5 "shall not be taken as a circumstance against the  
6 defendant," any circumstance, not just evidence, but any  
7 circumstance at all, can you follow that instruction?

8 A. If -- run that one by me again now.

9 Q. This is about the last one or two questions.  
10 Because I think I see where you're going, but I've just got  
11 to make you tell the Court whether you can follow this,  
12 okay?

13 You've got to be able, as you sit here today,  
14 before the case even starts, and -- you've got to promise  
15 the Judge that regardless of what you're about to hear, no  
16 matter how good or bad, whatever you hear, that you could  
17 promise that if he instructs you that if the defendant  
18 elects not to testify, you're not to use that as any  
19 circumstance against him, if that's what he instructs you,  
20 that you can follow that in every single situation,  
21 regardless.

22 A. I would do the best I could, yes.

23 Q. Now, that doesn't get you there.

24 A. I understand.

25 Q. Okay. Can you absolutely, unequivocally say,

1 "Yes, I can follow that instruction"? Can you say that?  
2 You've got to say that.

3 A. Yeah, I think I could if --

4 Q. Would you agree with me that there are situations  
5 where you just couldn't?

6 A. That's just so hypothetical, I don't know how to  
7 process that.

8 Q. You've got to be able to make the promise,  
9 Mr. Pearson, that on every situation, no matter what, if he  
10 gave you that instruction, you can follow that.

11 A. I will follow his instructions.

12 Q. Period, end of story?

13 A. Yes.

14 Q. Never even come close to violating?

15 A. Try not to.

16 Q. You've got to do better than try.

17 MR. HARRISON: Actually, Judge, I'm going to  
18 object to that last question. He either violates or  
19 doesn't. It's not coming close to violating. That's my  
20 objection.

21 THE COURT: Mr. Pearson, if I give you --  
22 well, there's not even an if. I'm going to instruct you  
23 that if the defendant does not testify, that the defendant's  
24 election not to testify cannot be considered as any  
25 circumstance of guilt or evidence of guilt against him.

1 Can you follow that instruction?

2 VENIREPERSON PEARSON: I can follow that,  
3 yes, sir. Yes, sir.

4 Q. (By Mr. Hawk) Have you had any fun at all for the  
5 last hour?

6 A. I have not had any fun, no.

7 Q. Thank you, Mr. Pearson, for your patience.

8 MR. HAWK: We pass the venireman.

9 THE COURT: Thank you, Mr. Hawk.

10 Mr. Pearson, if you'll step out just a  
11 moment, sir, we'll be right back with you.

12 (Venireperson Pearson leaves the courtroom.)

13 THE COURT: Any challenge for cause from the  
14 State?

15 MR. HARRISON: No, Your Honor.

16 THE COURT: What says the State?

17 MR. HARRISON: We accept the juror.

18 THE COURT: Any challenge for cause from the  
19 defendant?

20 MR. PERKINS: Yes, Your Honor. The defendant  
21 makes the following challenges for cause: First of all,  
22 that the prospective venireperson, Mr. Pearson, could not  
23 afford Mr. Beatty his Fifth Amendment privilege.

24 What Mr. Pearson would say is that he would  
25 do his best. In fact, I wrote down exactly what Mr. Pearson

1 said while he was testifying. He said, "I would do the best  
2 that I could. I think that I could. I would try not to  
3 violate his right against -- his Fifth Amendment rights."

4 He also said during the Defense's voir dire  
5 that he would consider the failure of Mr. Beatty to testify  
6 as a factor, that it could or couldn't make the State's  
7 witnesses more believable.

8 And, Judge, it's a completely proper question  
9 for the Defense to ask, would that fact alone make the  
10 State's case better, and that prospective juror said yes, it  
11 would. Would that make the State's witnesses more  
12 believable, and he says it could. He can't say whether or  
13 not he would hold it against him until after he hears the  
14 evidence. Well, that's not good enough.

15 And I disagree with Mr. Harrison's concept  
16 that either he violates or he doesn't. He has to be able to  
17 give this Court and the Defense and the State his assurance  
18 that he could follow that instruction prior to getting on  
19 the jury.

20 It's not good enough for him to get on the  
21 jury and listen to it and then say, like he said he was  
22 going to do, "Well, I can decide whether or not I will hold  
23 his failure to testify against him after the fact." That's  
24 not good enough.

25 He's not qualified unless he says he can do



1 it. The fact is that he says over and over and over again,  
2 if he didn't testify, it would probably hurt him. "After I  
3 heard the evidence, I might understand why he wouldn't want  
4 to testify." He's, at very best -- the very best  
5 interpretation that the State will ever get out of what he  
6 said is that he vacillates on that issue.

7 He says -- when they're questioning him, he  
8 says, "Oh, yeah, I could follow that instruction." And when  
9 the Court says, "If I instruct you to do this, could you  
10 follow that instruction?" He says, "Yeah."

11 And then when we say, "Would it make the  
12 State's case better, if the single factor is he didn't  
13 testify," and he says, "Yeah."

14 "Would it make the State's witnesses more  
15 believable?"

16 "Yeah, it would probably hurt him. He might  
17 be hiding something. I would feel like he had something to  
18 hide."

19 So at the very best interpretation that  
20 you'll ever get out of all this is that he vacillates on  
21 that issue. He's not qualified.

22 We also have an additional challenge. We  
23 would challenge him that he is not a qualified juror -- and  
24 I want the Court to stick with me through this -- because he  
25 failed to follow the Court's instructions in filling out his

1 jury questionnaire.

2 Now, we were lucky enough -- and under the  
3 Court's order and what we requested and what we were  
4 provided with prior to individual voir dire was the local  
5 criminal histories on these individuals.

6 He put down in his questionnaire that he had  
7 one PCS case in 1886 in Tyler. That's not the truth. When  
8 confronted by the State of Texas about it, he said, "Oh,  
9 yeah, I also had a DWI in 1999 that was reduced to a  
10 reckless driving."

11 That's still not the truth. He didn't say  
12 anything else, and, in fact, Mr. Harrison asked him, "Is  
13 there anything else?" "No."

14 But there is something else. He had an  
15 additional possession-of-marijuana arrest in 1978, according  
16 to the records that we've been provided, which he did not  
17 disclose until he was confronted by Mr. Hawk with that.

18 Now, it's strange because, generally  
19 speaking, the prosecution relies on people not giving honest  
20 answers to disqualify them from jury service. The State  
21 didn't make a challenge against him for that reason.

22 However, for the very same reason he failed  
23 to disclose his criminal history, even though right on the  
24 very first page of the juror questionnaire, it says -- I'm  
25 sorry -- it's on the second page, "Please note" -- and this

1 underlined -- "these answers are being made by you under  
2 oath as a jury panel member to give true and correct answers  
3 to all questions propounded to you under the direction of  
4 the Judge."

5 He failed to do that, Judge. And I have sat  
6 both at the prosecution side of the table and at the defense  
7 side of the table and seen the prosecution make this very  
8 motion in every type case and that these people were  
9 disqualified for failing to follow the Court's instructions  
10 and for failure to give truthful, complete, and honest  
11 answers.

12 He didn't do it. He didn't do it on Number 1  
13 until Mr. Harrison started questioning him about criminal  
14 history. He didn't admit the criminal DWI, and then he  
15 didn't admit his prior possession of marijuana, which the  
16 records indicate.

17 And in fact, even during his voir dire, he  
18 says, "Oh, that case was dismissed." Well, that's not true  
19 either, Judge. That case was reduced, according to the  
20 Smith County record, from a possession of marijuana to a  
21 disorderly conduct in 1978. So he was prosecuted for that.

22 He's lying about those things, Judge. And  
23 the only way that we've ever caught him in it is we've had  
24 that access to that information and confronted him with it.  
25 And Mr. Hawk said, "Now, how many times have you been

1 arrested, once or twice?" And then he's like, "Oh, twice."  
2 He's not telling the truth.

3 He's disqualified. Sauce for the goose is  
4 sauce for the gander, Judge. If they're disqualified when  
5 the State challenges them, they're disqualified when the  
6 Defense challenges them.

7 Those are all of the reasons, not just the  
8 last one, but also the Fifth Amendment. We believe that he  
9 is not qualified as a juror on either ground.

10 THE COURT: The Court is satisfied that the  
11 venireperson will be able to follow the Court's instructions  
12 in not holding the defendant's election not to testify, if  
13 the defendant does not testify, as any circumstance or  
14 evidence of guilt against him.

15 He gave the Court an unequivocal answer to  
16 that question. The Court is satisfied he could follow the  
17 Court's instructions and not hold it as any circumstance or  
18 evidence or guilt against the defendant if the defendant  
19 does not testify.

20 What response do you have, Mr. Harrison, to  
21 the other part of Mr. Perkins' motion and reference, the  
22 failure to disclose? The Court's recollection is, you did  
23 ask him about a DWI that was not listed, and he said it was  
24 reduced to reckless driving, and he thought that was a  
25 traffic ticket.

1 I recollect some explanation he had about  
2 another PCS. What's your response to Mr. Perkins?

3 MR. HARRISON: Judge, my response is, first,  
4 that the PCS was included from -- I think he said 1996 in  
5 Tyler. He indicated to myself when he was -- on the jury  
6 questionnaire, on Question Number 53 on page 13, he did  
7 indicate the PCS in 1996.

8 My recollection of his testimony is the  
9 DWI -- and I think it's borne out on the records that were  
10 run through the Smith County local computer provided to the  
11 Defense, that the DWI was reduced to a reckless conduct,  
12 which is a Class C, equivalent to a traffic ticket.

13 The question -- Number 53 on the  
14 questionnaire says, "Do not include parking tickets or  
15 speeding tickets." He indicated on the witness stand he  
16 believed it to be the equivalent of a traffic ticket.

17 THE COURT: I recall that testimony.

18 MR. HARRISON: I'm sorry, Judge. The other  
19 marijuana case that he indicated, he did admit to when asked  
20 by Mr. Hawk, and he indicated that his belief was that that  
21 case had been thrown out; therefore, it would not be  
22 something that he would be required to put down, in his  
23 mind, on Question Number 53.

24 My further response is that the Court has to  
25 make an independent determination as to whether a venireman

1 is attempting to deliberately misrepresent any criminal  
2 history to the detriment of either side of the attorneys.

3           Clearly, the DWI is being reduced to what  
4 amounts to a traffic ticket, a Class C offense, and in his  
5 mind and from his testimony, the venireman indicates that  
6 the other marijuana case he believes to have been thrown out  
7 would not lead anyone, in my opinion, to conclude that he  
8 was attempting to hide or misrepresent anything, especially  
9 coupled with the fact that when he was asked about it on the  
10 stand, he admitted to it, and he had already indicated that  
11 he had been arrested for a PCS case in 1996 in Tyler.

12           He wasn't trying to escape detection and  
13 indicated that he had never been arrested for anything. He  
14 put down what he believed he had been arrested for would be  
15 that PCS case in 1996.

16           The other one he's indicated, I believe  
17 truthfully, from everything he said and from all the  
18 circumstances surrounding what he said, that he believed to  
19 have been thrown out and thrown out of court, so that  
20 wouldn't qualify, and the DWI was reduced to what he  
21 indicated was a traffic ticket, which the Court had excluded  
22 in its question.

23           Clearly, the Court gets to judge the  
24 credibility of the venireman and determine on its own  
25 whether the venireperson was attempting to misrepresent or

1 mislead somebody.

2           Clearly, when he indicates that he did have  
3 the PCS in 1996, that should lead to the conclusion that  
4 he's not trying to represent that he's never been arrested  
5 for anything and doesn't have a criminal history.

6           He gave valid and legitimate reasons why he  
7 didn't come forward on the DWI case, and the other  
8 misdemeanor case, that he indicated he believed to have been  
9 thrown out of court.

10           THE COURT: All right. The Court's ruling --  
11 and the Court will be consistent in the Court's ruling. The  
12 Court has to observe the demeanor of the venireperson,  
13 listen to this venireperson's answers regarding the criminal  
14 history questions which were asked, observing his demeanor,  
15 listening to his answers and his explanations when given  
16 under questioning.

17           The Court doesn't find that he was  
18 intentionally -- the Court does not find that he was  
19 intentionally misrepresenting information on his juror  
20 questionnaire nor intentionally misrepresenting why he  
21 listed or did not list information on the criminal history  
22 questionnaire.

23           Taking into consideration his demeanor  
24 through the entire voir dire, as well as the reasons he gave  
25 why the information not listed, was not there, the Court

1 doesn't find him an unfit juror, so I'm going -- I'm going  
2 to -- unless you have something else, Mr. Perkins?

3 MR. PERKINS: No, Judge. I understand the  
4 Court's ruling. I just want -- I was going to request that  
5 the District Attorney's Office provide the Court with a copy  
6 of the criminal history, the local criminal history that  
7 they ran, that we would mark as an appellate exhibit, and  
8 also -- and I don't know how this generally works, but that  
9 his juror questionnaire also be saved for appellate  
10 purposes.

11 THE COURT: Well, the Court will include both  
12 those as a part of the record, the entire questionnaire of  
13 the Court on the criminal history, Mr. Perkins.

14 MR. PERKINS: I'm sorry?

15 THE COURT: The part of the criminal  
16 history -- do you want the whole questionnaire in there or  
17 the part on the criminal history? There's a bunch of stuff  
18 in there that doesn't relate to the issue you're talking  
19 about.

20 MR. PERKINS: I think in the interest of  
21 safety, his entire questionnaire, Judge.

22 THE COURT: The Court will put in the  
23 questionnaire plus criminal history? Is that what you said?

24 MR. PERKINS: Because, basically, what it is,  
25 Judge, is --



1 THE COURT: They will both be entered.

2 MR. PERKINS: Right. Our position is he had  
3 a DWI that was reduced to reckless driving. Obviously,  
4 reckless driving is not the same thing as a traffic ticket,  
5 no matter -- you know, you can call one thing one thing and  
6 it be something else.

7 THE COURT: Well, the Court has considered  
8 all his answers. I'll include in the record what you want  
9 included in the record.

10 MR. PERKINS: Obviously, the one that he did  
11 disclose, he circled "arrest." He didn't circle that he was  
12 placed on probation, and, again, the record reflects that he  
13 was. We think that he is being deceptive in his answers,  
14 and so I would like his entire questionnaire and the Smith  
15 County criminal history that we were provided access to -- I  
16 don't have one or I would mark it myself.

17 THE COURT: Then the Court just needs to be  
18 provided with a copy of each one of those. They'll be made  
19 a part of the record. And, Mr. Perkins, is -- I don't know  
20 that I ever got quite to it -- your motion for -- to  
21 challenging him for cause is denied. Those exhibits will be  
22 in the record at your request.

23 If you want to mark them -- do you want to  
24 mark them, Mr. Perkins?

25 MR. PERKINS: There are actually three -- I'm

1 sorry -- I guess four -- three stapled sets of pages and one  
2 single page. What I'll do for --

3 THE COURT: However you want to do it.

4 MR. PERKINS: I'll just staple them all  
5 together, attach them all together, and mark them as  
6 Defendant's Exhibit A, unless we have an A already.

7 THE COURT: Defendant's Exhibit A is admitted  
8 as part of the record. If you'll just hand that to  
9 Mrs. Christopher to be made part of the record.

10 MR. PERKINS: I've handed those to the court  
11 reporter or a court reporter in the case, Mr. Awbrey.

12 And given that the Court has denied our  
13 challenge for cause, we're forced at this time to use our  
14 first peremptory challenge on John Pearson.

15 THE COURT: All right. Thank you,  
16 Mr. Perkins.

17 Ask Mr. Pearson to step back in.

18 (Venireperson Pearson enters the courtroom.)

19 MR. PERKINS: Judge, what I'll also do -- my  
20 questionnaire has writing and highlights all over it.

21 THE COURT: You know, I've probably got a  
22 blank one up here, Mr. Perkins.

23 MR. PERKINS: If the Court has an additional  
24 questionnaire, I would like to mark that as Defendant's B,  
25 and I can tender that to the court reporter as well.

1 THE COURT: Mr. Pearson?

2 VENIREPERSON PEARSON: Yes, sir.

3 THE COURT: Mr. Pearson, we are going to be  
4 able to excuse you at this time from any further jury  
5 service in the case. The Court deeply appreciates your  
6 response to the summons. You spent all day down here  
7 Thursday and then, obviously, came back and spent a lengthy  
8 period of time today going through the individual voir dire,  
9 which is part of the process.

10 Both the State's attorneys and the defense  
11 attorneys have a job to do. You've been an important part  
12 of the process in being available for jury service. The  
13 Court appreciates your service, as I know both the State and  
14 Defense do in this case, but the Court will be able to  
15 finally excuse you from any further jury service at this  
16 time. Thank you, sir.

17 (Venireperson Pearson leaves the courtroom.)

18 (End of proceedings reported by Kim  
19 Christopher, CSR.)

20 (The following proceedings were reported by  
21 Steve R. Awbrey, CSR:)

22 (Venireperson Worley enters the courtroom.)

23 THE COURT: Ms. Worley, how are you doing?

24 VENIREPERSON WORLEY: Fine. I'm a little  
25 cold.

1 THE COURT: Yes, ma'am. I was advised of  
2 that by one of the attorneys, so I turned the air  
3 conditioning off.

4 We're back on the record in 241-0978, the  
5 State versus Tracy Beatty. State's attorneys present; the  
6 defense attorneys are present; the defendant is present.

7 Ms. Worley, this is that procedure we talked  
8 about some last Thursday called individual voir dire. It's  
9 a procedure where the State's attorneys are going to ask you  
10 some questions, one of them, and then the defense attorneys,  
11 one of them will ask you some questions.

12 There's not any right or wrong answers to the  
13 questions. They are both trying to select a jury in this  
14 case where all the jurors will be fair and impartial and can  
15 follow all the laws as given by the Court.

16 As a result, they have to ask you some  
17 questions about your views on certain issues, can you follow  
18 certain principles of law that guide the procedures in the  
19 type case that you would be a juror on if you were selected  
20 in this case.

21 You need to be sure when they ask you a  
22 question that you -- like rather than, say, nodding your  
23 head yes and no, that you say yes, no, or whatever the  
24 answer calls for, because the court reporter over here,  
25 Mr. Awbrey, he can't take down nods of the head, so he's got

1 to get an answer for the record, whatever your answer is.

2 Also, if you would try to keep your voice up  
3 a little bit. I just turned the air conditioner off, which  
4 I suppose should help everybody, but sometimes it will come  
5 back on, which it does. If it does, it's a little hard to  
6 hear. So if you keep your voice up, that will help.

7 Also, have you thought of anything since  
8 Thursday that you might want to tell us about that you need  
9 to add to your questionnaire?

10 VENIREPERSON WORLEY: On the last -- it  
11 wasn't the last question, but there's a question if you know  
12 any of these people on this list.

13 THE COURT: Yes, ma'am.

14 VENIREPERSON WORLEY: It said the list is at  
15 the end. Well, I thought there was just one page, and I  
16 don't know -- there was one person that might possibly be on  
17 there that I know.

18 THE COURT: Who is that?

19 VENIREPERSON WORLEY: Pridgen, Keith Pridgen.

20 THE COURT: Keith Pridgen? Keith Pridgen  
21 works out at the Department of Public Safety Lab. Do you  
22 think that might be the Keith Pridgen you know?

23 VENIREPERSON WORLEY: Yes, that is.

24 THE COURT: Well, that's Keith Pridgen that  
25 works at the Department of Public Safety Lab, and I'm sure

1 probably one of the attorneys will want to ask you some  
2 questions about that.

3 Basically, you just didn't circle that  
4 because you didn't see it or something?

5 VENIREPERSON WORLEY: I just -- it was an  
6 oversight.

7 THE COURT: That's okay. That's all right.

8 Okay. I think that -- they will just make a  
9 note that you do know or are acquainted with Keith Pridgen.  
10 We'll go ahead and get the voir dire started.

11 Just relax, and if one of the attorneys ask  
12 you a question you don't understand, don't hesitate to tell  
13 them, "I just really don't understand what exactly you're  
14 asking me; would you say that again," and they will rephrase  
15 it for you.

16 Ms. Sikes.

17 MS. SIKES: Thank you, Judge.

18 ANNIE WORLEY,  
19 having been duly sworn as a member of the special venire,  
20 was examined as follows:

21 VOIR DIRE EXAMINATION

22 BY MS. SIKES:

23 Q Good afternoon, Ms. Worley. We almost made it to  
24 evening.

25 A Almost.

1 Q And when the Judge says just relax, we're all  
2 going to try to do that. It's been a long day. We've been  
3 here a long time.

4 But if there's something that I ask you --  
5 you probably won't have a problem hearing me even if the air  
6 conditioner starts because I'm rather loud, probably one of  
7 the loudest of the group. But if you don't hear me or if  
8 there's something that doesn't make any sense, if you'll ask  
9 me, I'll try to rephrase it.

10 A Okay.

11 Q I know we've been introduced to you before, but  
12 since we have an opportunity to talk one on one, I'll just  
13 say I am April Sikes, the chief felony prosecutor for the  
14 DA's Office.

15 This is one of my bosses to my right, Brett  
16 Harrison, who's our first assistant DA. And then to his  
17 right is the defendant, Tracy Beatty. Sitting beside him is  
18 Mr. Robert Perkins, his attorney, and Mr. Ken Hawk, another  
19 one of his attorneys.

20 Seeing our faces or getting to see us up this  
21 close, do you know any of us?

22 A No, I do not.

23 Q And speaking of knowing people, before I forget,  
24 you said that you -- you mentioned that you do know Keith  
25 Pridgen, correct?

1 A Yes.

2 Q Is that a personal relationship or a business  
3 relationship?

4 A He's a deacon in the church where I go to, and I  
5 know his in-laws real well.

6 Q So you attend the same church, and you know his  
7 family or his in-laws?

8 A His in-laws and his wife.

9 Q Anything about that relationship that would affect  
10 your ability to sit as a fair and impartial juror if he was  
11 called to testify in this case?

12 A No.

13 Q In other words, if he testified, you would judge  
14 his weight and credibility just as you would if a total  
15 stranger testified?

16 A Yes.

17 Q He wouldn't start out above another witness or in  
18 front of?

19 A No.

20 Q Now, with that said, you probably know, from being  
21 here last Thursday and from having to fill out this  
22 questionnaire, that this is a capital murder case. At least  
23 that's how the grand jury has indicted the case, correct?

24 A Yes.

25 Q And as such, the State has filed a notice of our



1 intent to seek the death penalty; hence, some of the  
2 questions that you discussed in your questionnaire. That's  
3 why we have the opportunity -- the law provides us the  
4 opportunity to sit here and visit one on one rather than  
5 picking the jury from that large panel.

6 Now, I'm going to ask you some questions, and  
7 just about the time -- we've said this all day -- just about  
8 the time you think that there can't possibly be anything  
9 else to ask, then I'll turn you over, and the Defense will  
10 ask a lot more questions. So if you'll just bear with us,  
11 we'll try to make it as painless as possible.

12 There are a couple of things that I want you  
13 to keep in mind as I ask you questions. The first one is,  
14 you haven't heard any evidence in the case; is that correct?

15 A That's correct.

16 Q And you won't today because the law doesn't  
17 provide for that opportunity. You won't know any evidence.  
18 This is just the jury selection process.

19 So every question that I ask or the defense  
20 lawyers ask or the Court, for that matter, is going to be  
21 predicated on the fact that you don't know any evidence, and  
22 we don't expect you to know any evidence.

23 Is that kind of a relief?

24 A Yes.

25 Q Also, say it's kind of a relief to know that

1 you're not charged, as you sit here today, with knowing any  
2 of the law that involves murders or capital murders or any  
3 of the other things that will be discussed. That's always a  
4 big relief even to me.

5 What we'll do, though, is we're going to talk  
6 a little bit. I'm going to tell you about some principles  
7 of law that may or may not apply and then get your feelings  
8 about that, okay?

9 A That's fine.

10 Q There are a couple of things that I want you to  
11 keep in mind as we talk. The first is that I've told you  
12 what the law doesn't charge you with. You don't sit here  
13 today having to know the evidence or having to know all the  
14 law.

15 But it does require three things of you to  
16 sit as a juror: That you can be fair and impartial to the  
17 State and to the Defense; that you can follow the law that  
18 the Court will give you at the end of the case in the  
19 charge; and that you can -- that you're not already  
20 committed to a decision; in other words, that you can keep  
21 an open mind, listen to all the evidence, and wait to base  
22 your verdict upon that evidence at the end of the case.

23 And as you sit here now, if you'll just keep  
24 those things in mind as we go along, and maybe they'll make  
25 a little more sense, okay?

1 A Okay.

2 Q Let's talk about the death penalty a little bit.  
3 When you walked in last Thursday and heard for the first  
4 time that the State was seeking the death penalty in a  
5 capital murder case, what were some of your first thoughts?

6 A I don't remember exactly what my first thoughts  
7 were. I was a little surprised. I've served on juries  
8 before but never on a criminal case.

9 Q Is the death penalty something that you've had a  
10 great deal -- put a great deal of thought into, or is it  
11 something that you've discussed with family or friends?

12 A I don't think I've ever discussed it with anyone  
13 except maybe my husband, and that's not this but in general.

14 Q Sure.

15 A The death penalty, we have discussed that years  
16 past.

17 Q And in general, when I look at your questionnaire,  
18 your answer to Question 67 is that you generally favor the  
19 death penalty?

20 A I favor it in certain cases.

21 Q Sure. And that would be the next question. You  
22 answered or you checked, "I believe that the death penalty  
23 is appropriate in some cases." Is that a fair statement?

24 A That's generally speaking. May I go ahead and  
25 explain?

1 Q Sure. Please do.

2 A The thought of myself being in judgment of another  
3 human being is not a comfortable feeling for me.

4 Q Right.

5 A But at the same time, acts of pain and suffering  
6 on innocent people is just as chilling to me. So I think,  
7 all things considered, in some cases, yes, I do.

8 Q And that's all we're really looking for. You  
9 know, the law requires that we have fair and impartial  
10 jurors for the defendant and for the State. A lot of times  
11 people forget or don't think about -- it's not as readily  
12 available when they're thinking about fairness in a trial.

13 It wouldn't be fair to the defendant to have  
14 someone sitting there saying, "You know what; I would give  
15 the death penalty every single time," because, obviously,  
16 every single time wouldn't be fair to a defendant. There  
17 ought to be a procedure in place, and there is, for when  
18 those times are appropriate.

19 On the other hand, it wouldn't be fair to the  
20 State to have a juror who said, "I would never give it."  
21 You see, it's kind of a sliding scale.

22 So what -- I take it, from what you're  
23 saying, is that there are times when you believe it to be an  
24 appropriate punishment, and there are times when you feel  
25 like it wouldn't be appropriate based upon the facts that

1 you hear, base upon the evidence that you hear?

2 A In some cases, I think -- in a civilized society,  
3 I think there are cases that might warrant that, if all hope  
4 of rehabilitation -- maybe if there was no hope and if the  
5 crime was severe enough.

6 Q What about if you yourself was responsive -- if  
7 you were responsible for -- say, we make you president or  
8 head of the legislature, and you're charged with deciding  
9 what we do with the death penalty. Do we keep it as it is?  
10 Do we abolish it altogether? Where would your decision be  
11 if it was up to you?

12 A I would have to say to keep it.

13 MS. SIKES: Can I have just one second,  
14 Judge?

15 THE COURT: Yes.

16 (Pause in the proceedings.)

17 MR. PERKINS: Judge, could we approach just  
18 briefly?

19 THE COURT: Yes.

20 (At the bench, on the record.)

21 MR. PERKINS: I apologize for not having this  
22 done before this juror came in. We've been looking down the  
23 road, and I believe we've reached an agreement which would  
24 not require her to go through individual voir dire.

25 THE COURT: Go ahead.

1 MR. PERKINS: Our agreement is 35.05 to  
2 excuse the following individuals: Juror Number 18, who's in  
3 the courtroom right now, Juror Number 24 and Juror  
4 Number 30. I'll get their names and read them into the  
5 record here in a minute.

6 In the interest of time, if we're going to  
7 agree to do them we might as well do them now than two hours  
8 from now.

9 MR. HARRISON: We're in agreement.

10 THE COURT: That will be Juror Number 18,  
11 who's this juror, Juror Number 24, Juror Number 30?

12 MR. PERKINS: Juror Number 30, we just got  
13 some information on him. He's in ICU, and he's got all  
14 kinds of medical problems. And we were finalizing that, and  
15 we couldn't get that finalized before this juror had to come  
16 in. And that is with Mr. Beatty's consent and approval.

17 THE COURT: 18, 24, and 30?

18 MR. PERKINS: Right now.

19 (End of bench conference.)

20 THE COURT: Ms. Worley, the Court has been  
21 advised of some information that is actually going to make  
22 it possible for the Court to excuse you from jury service at  
23 this time.

24 The information actually doesn't have  
25 anything to do with you personally. It's not like the Court

1 finding out something that the Court didn't know; it's just  
2 that there is a procedure that can become available to the  
3 Court, with the cooperation and agreement of the attorneys,  
4 that may result in a juror being able to be excused from  
5 jury service.

6 And that has taken place in your case. The  
7 Court just became aware of that. It certainly doesn't have  
8 anything to do whatsoever with anything you have done; it's  
9 just as a result of this procedure.

10 I'm going to be able to excuse you from jury  
11 service at this time. We very much appreciate you coming  
12 down. I know you had to wait for some time because we were  
13 running a little bit behind on the last juror, but you've  
14 been a very important part of the process in being here all  
15 last Thursday and making yourself available for jury service  
16 and coming down and being available to go through the  
17 individual voir dire today.

18 But now we'll be able to excuse you from any  
19 further jury service in the case. You are finally excused  
20 with the Court's deep appreciation for being available for  
21 jury service in this case and also the appreciation of the  
22 State and the Defense.

23 VENIREPERSON WORLEY: Okay.

24 THE COURT: Thank you very much.

25 VENIREPERSON WORLEY: Thank you.

1 THE COURT: Yes, ma'am. Thank you.

2 (Venireperson Worley leaves the courtroom.)

3 THE COURT: Okay. Mr. Perkins, go ahead and  
4 dictate it in.

5 MR. PERKINS: Judge, to go ahead and finalize  
6 the agreement that we have reached under 35.05, the juror  
7 that was in here, Annie Worley, who was a 1 and generally in  
8 favor of the death penalty, we have agreed to excuse the  
9 following jurors: Juror Number 18, Annie Worley; Juror  
10 Number 24, Betty Cauthen (sic); and Juror Number 30, Claborn  
11 Moore.

12 Mr. Moore is the one that I was indicating to  
13 the Court at the bench that we just got a note on. He's  
14 currently in ICU. He's been in ICU eight times since March.  
15 He's scheduled for 4:00 o'clock tomorrow afternoon. We just  
16 got that note and had an opportunity to look at his card,  
17 visited with the State, and Mr. Beatty regarding those  
18 individuals.

19 And for reasons which -- obviously, different  
20 reasons between the State and the Defense, we have agreed to  
21 excuse each of those individuals under 35.05.

22 THE COURT: Then under 35.05, Juror  
23 Number 18, Annie Worley, who was just on the stand and  
24 started to undergo individual, is excused pursuant to 35.05  
25 agreement between the State and Defense.



1                   Also, Juror Number 24, who was scheduled for  
2 tomorrow morning, Betty Cauthers, is excused pursuant to  
3 35.05 agreement between the State and Defense.

4                   And also Juror Claborn Lavon Moore, Mr. Moore  
5 is excused pursuant to an agreement between the State and  
6 Defense under 35.05.

7                   Are you in agreement with all those,  
8 Mr. Beatty?

9                   THE DEFENDANT: Yes, sir.

10                  THE COURT: The Court had received  
11 information just a little while ago in regard to Claborn  
12 Moore, who was scheduled for 4:00 o'clock tomorrow  
13 afternoon, which the Court handed to Mr. Hawk. That  
14 information did reflect, as Mr. Perkins obviously said, that  
15 Mr. Claborn Moore is ICU at this time. He's been in eight  
16 times since March.

17                  Therefore, those three 35.05 agreements are  
18 approved by the Court.

19                  Carleton, be sure that the staff calls Juror  
20 Number 24, Betty Holley Cauthers, C-A-U-T-H-E-R-S. She is  
21 excused. She is scheduled for 10:15 in the morning.

22                  And also if they will call the family of  
23 Claborn Moore, of course, and let them know that Mr. Moore  
24 is excused from any further jury service.

25                  THE BAILIFF: Yes, sir, I will.

1 THE COURT: And then would you tell Shirley  
2 Griffin, who is our next juror, to come on in?

3 (Venireperson Griffin enters the courtroom.)

4 THE COURT: Ms. Griffin, go ahead and have a  
5 chair, please, ma'am.

6 VENIREPERSON GRIFFIN: Okay.

7 THE COURT: Ms. Griffin, how are you this  
8 afternoon?

9 VENIREPERSON GRIFFIN: Oh, I'm fine.

10 THE COURT: Well, I'm glad we got to you, and  
11 you didn't have to wait any longer than necessary out there.

12 This is the process we talked about to some  
13 degree Thursday in the big room where this is going to be  
14 the individual questioning of you by attorneys for the  
15 State -- one of the attorneys for the State, one of the  
16 attorneys for the defendant.

17 The oath that you took Thursday, you're still  
18 under that oath, so your answers will be under oath today.

19 There's not any right or wrong answers to  
20 their questions. It is important that when they ask a  
21 question and you answer, if you can answer out yes, no, or  
22 whatever the answer calls for, because the court reporter,  
23 Mr. Awbrey, cannot take down, like, shakes of the head yes  
24 and no.

25 VENIREPERSON GRIFFIN: Gotcha.

1 THE COURT: He's got to have words to put  
2 down.

3 Also, is there any information that you may  
4 have thought of on your questionnaire that you filled out  
5 Thursday that you need to let us know about now that maybe  
6 you just missed Thursday or thought about since then that  
7 you can think of?

8 VENIREPERSON GRIFFIN: No, sir.

9 THE COURT: I'm going to go ahead and turn  
10 the questioning over to Ms. Sikes, who will be seated over  
11 here to your right, the chief felony prosecutor for the  
12 Smith County District Attorney's Office.

13 Just relax. As I've said, there's no right  
14 or wrong answers. All both the State's attorneys and the  
15 defendant's attorneys are trying to do is just ask  
16 questions, because they're both interested and their jobs  
17 are to try to select fair and impartial jurors to come into  
18 the case with an open mind, who can hear the evidence, base  
19 their verdict in the case on the evidence, and follow all  
20 the law of the courts.

21 So with that, I'll turn it over to Ms. Sikes.

22 MS. SIKES: Thank you, Judge.

23 SHIRLEY JUNE GRIFFIN,  
24 having been duly sworn as a member of the special venire,  
25 was examined as follows:

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR  
241ST JUDICIAL DISTRICT COURT  
SMITH COUNTY, TEXAS

1 VOIR DIRE EXAMINATION

2 BY MS. SIKES:

3 Q Good afternoon, Ms. Griffin. How are you?

4 A Oh, I'm fine.

5 Q I started to say good morning. It's been a long  
6 day. It's almost good evening.

7 As the Judge told you, if you'll just relax.  
8 Are you nervous?

9 A A little.

10 Q Kind of an unusual situation, obviously. You  
11 know -- you've already been introduced to all of us. Now  
12 that you see everybody here, does it appear that you know  
13 anyone?

14 To my right is my boss, Mr. Bingham, the  
15 elected district attorney. Do you know Mr. Bingham?

16 A No.

17 Q Mr. Harrison, another one of my bosses, first  
18 assistant.

19 A No.

20 Q Seated next to him, the defendant, Tracy Beatty.

21 A No.

22 Q Mr. Perkins, his lawyer, and Mr. Hawk, another one  
23 of his attorneys.

24 A Never seen any of them.

25 Q All right. With that said, we're going to --

1 A Thank goodness.

2 Q They're usually glad when they haven't seen us  
3 anyway.

4 We're going to move on to the fact that you  
5 know the grand jury has returned an indictment -- and we're  
6 going to talk about that in a little bit -- charging  
7 Mr. Beatty with the offense of capital murder.

8 And I assume -- when you first found that out  
9 last Thursday, what did you think about that?

10 A Personally, I was dumfounded that I got called.

11 Q That you were one of the lucky ones?

12 A Oh, yeah, real lucky. Yeah.

13 Q You've heard that the State has filed a notice of  
14 our intent to seek the death penalty in that case?

15 A Yes.

16 Q And I assume that became even more clear when you  
17 were asked questions in your questionnaire about your  
18 opinions about the death penalty, and I'm just going to kind  
19 of cut right to the chase and talk to you a little bit about  
20 that.

21 A Okay.

22 Q Judge Skeen asked you if there was anything,  
23 thinking back, that you wanted to change about your  
24 questionnaire, and you said no; is that right?

25 A Yeah.

1           Q     Question 67 says, "In general, how do you feel  
2 about the death penalty?" You were given three options,  
3 either generally against it, generally in favor of it, or no  
4 opinion. And your answer, you circled no opinion.

5                     Can you just tell me a little bit about what  
6 you base that answer upon? How did you arrive at that  
7 decision?

8           A     Well, at that time, I had no opinion because I had  
9 never -- I had never thought about it --

10          Q     Sure.

11          A     -- until it hits you like now. So I have thought  
12 about it over the weekend. I've prayed about it. I have  
13 come up with an answer.

14          Q     A different answer?

15          A     Yes.

16          Q     And what would that answer be?

17          A     I could do it and sleep the rest of my life. I  
18 could do it. I wouldn't want to, but I could do it.

19          Q     And that's a fair statement. When you say could  
20 do it, you mean sit on a jury, listen to the evidence,  
21 assess a sentence in the case?

22          A     Yes.

23          Q     We're going to talk a little bit about that.

24                     You know, you also said in the next one you  
25 believe the death penalty was appropriate in some cases. Is

1 that still the way you feel?

2 A Yes.

3 Q You know, what we're here about is -- I like to  
4 say there's a long continuum of people. You know, over here  
5 on one end, there are people who say, "I would never give  
6 the death penalty regardless of what the law was or what my  
7 instructions from the Court were."

8 And on the opposite end, way down there  
9 somewhere, there are people who say, "I would give the death  
10 penalty for any case. Wish it was for theft by checks."  
11 You know, there's an extreme on either end.

12 What you're telling me -- and you correct me  
13 if I'm wrong -- is that it wouldn't be an easy decision for  
14 you, but you believe it is appropriate in some cases?

15 A Correct.

16 Q The other thing I want to talk to you about is, as  
17 a juror, are you familiar with the sentencing of a capital  
18 murder case?

19 A No.

20 Q Let's talk about that a little bit, because you  
21 said you could do it, and I want you to know what that means  
22 by -- if you sit on this jury, you would actually -- there's  
23 not going to be a box on the verdict form.

24 And we only get to that point if you find the  
25 defendant guilty of capital murder, and we're going to talk

1 about some special issues that are there.

2 There's not going to be a box that says  
3 "death penalty," check; "life," check. But there are two  
4 options. When -- if you find a defendant guilty of capital  
5 murder, there are two sentencing options. One is life,  
6 which, in Texas, we don't have life without parole.

7 Were you aware of that?

8 A I think I might have had an idea. I think it  
9 changed. We used to have it.

10 Q So you understand that the law now is that if you  
11 give a life sentence, it's not without parole?

12 A Right.

13 Q In fact, the person would serve 40 calendar  
14 years -- that means day-for-day time -- without -- before  
15 they become eligible for parole. That's one option.

16 The other option, then, would be the death  
17 sentence, and that is arrived at by what are called special  
18 issues. You would answer those special issues after you  
19 listened to all the evidence. I think they're there in  
20 front of you.

21 The first one says, "Is there a probability  
22 that the defendant would commit criminal acts of violence  
23 that would constitute a continuing threat to society?"

24 A lot of times we refer to that special issue  
25 as -- is whether or not the defendant would be a future



1 danger. In other words, would he continue to commit acts of  
2 violence?

3 That, of course, we would have to prove to  
4 you beyond a reasonable doubt. The burden of proof is on  
5 the State. Always is.

6 A Right.

7 Q If you find someone guilty of capital murder, then  
8 you move to -- let me start with this.

9 Do you think all people who are convicted of  
10 capital murder deserve the death penalty?

11 A That's a hard one. Could you run that by me one  
12 more time?

13 Q You know, your answer -- I guess I should have  
14 asked you a few more questions about it, so let's back up  
15 just a minute.

16 You know, when you said you changed your  
17 answer from no opinion, that you had thought about it --

18 A Yes.

19 Q -- and now would your answer be -- which choice?  
20 That you generally favor it or you're generally against it?  
21 Where would you come down on that side?

22 A In the middle.

23 Q Between favoring and being against it?

24 A Yes.

25 Q Would that be still consistent with your answer

1 that you believe it's appropriate in some cases?

2 A Right.

3 Q I want to talk to you about those special issues a  
4 little bit. We talked about the first one.

5 Did you read it to yourself?

6 A Yes.

7 Q Did you see it there, a continuing threat?

8 A Yes.

9 Q There's also -- you see the second one? It's not  
10 really applicable in this particular case. It's normally  
11 given when the defendant acts in concert or together with  
12 other people, not when he acts alone.

13 So I don't expect that you'll see that in  
14 this case. So we're going to skip it and talk about the  
15 first one and the third one. You see the third one there?

16 A Yes.

17 Q Can you read it to yourself?

18 A Yes, ma'am. (Complies.)

19 Q We call that special issue -- or we say that that  
20 deals with mitigation. You see what it says?

21 A Yes.

22 Q Taking the evidence into consideration, the  
23 circumstances of the offense, the defendant's character and  
24 background, personal moral culpability, if there's a  
25 sufficient mitigating circumstance, which would be one, or

1 circumstances, more than one, to warrant a sentence of life  
2 over a death sentence, right?

3 A Okay.

4 Q So we talked about you're not going to see a box  
5 that's check "life" or check "death," but you would know, as  
6 a juror in that situation, if I answer, yes, he's a  
7 continuing threat to society, and, no, there's no  
8 mitigation -- mitigation is anything that would lessen his  
9 burden or responsibility for the crime --

10 A Okay.

11 Q -- you know if you answer the questions that way,  
12 then the Court is going to do what?

13 A If I --

14 Q If he's a future danger and there's no mitigation.

15 A Then he's going to get the death penalty.

16 Q Then he's going to get the death penalty.

17 A Right.

18 Q As a juror, what you're required to do -- those  
19 three questions that we've talked about -- listen to all the  
20 evidence, be fair and impartial, keep your mind open until  
21 you've heard everything.

22 I'm not asking you for one decision or  
23 another, but what I'm asking you is, could you keep your  
24 mind open and answer those questions based upon the evidence  
25 that was presented to help you answer that?

1                   You know, we have to prove the first one --

2           A     Yes.

3           Q     -- beyond a reasonable doubt. You know, the third  
4 special issue about mitigation, there's no burden of proof.  
5 It's a little different.

6                   There's no definition of mitigation.  
7 Mitigation is something that we talked about, that lessens  
8 the burden or lessens the responsibility.

9                   A juror earlier, I think, said it is what it  
10 is. Mitigation to you may be one thing. Mitigation to me  
11 may be another. And the jury is not required to agree on  
12 what is mitigating but just that there is mitigation  
13 involved.

14          A     Okay.

15          Q     So what I'm asking you is -- I'm going to go back  
16 to the start. What I'm asking you is specifically about  
17 your questionnaire.

18                   Is your mind open at this point to -- now  
19 that we know you are between generally favoring and  
20 generally against, your mind is open to answering those  
21 special issues in a way that would either, you know, assess  
22 a life sentence or assess the death penalty?

23          A     Yes.

24          Q     Now that we've gone there, I'm going to go back to  
25 the start.

1 A Okay.

2 Q So if it sounds like I skipped around a little  
3 bit, I did.

4 Remember when we first started, there are  
5 three things that I want to talk to you about. You can be  
6 fair and impartial. You know, the Court doesn't require you  
7 at this time, the law doesn't require you at this time to  
8 know anything at all about evidence in this case.

9 Is that a relief to you?

10 A Yes, it is.

11 Q It's always a relief to me.

12 Here's the second biggest relief. Also, the  
13 law doesn't require you to know what the law is governing  
14 capital murder cases or murder cases, what are lesser  
15 included offenses, and we'll talk about that a little bit.

16 Is that also a relief to you?

17 A Yes.

18 Q Here are the things that would be required for you  
19 to be a juror on the case: That you be fair and impartial  
20 to both the State and the Defense, like we talked about;  
21 that you can follow the law; in other words, you don't have  
22 to know what it is, but the Court's going to give it to you  
23 at the end of the trial in a charge, a written document, and  
24 you're going to have to take an oath that you're going to  
25 follow the law that he gives to you.

1                   That's why we spend so much time talking  
2 about issues like the death penalty, because if you have --  
3 it sounds ugly -- but if you have a bias or a prejudice  
4 against the law as it's written, then this is not the case  
5 for you to be here.

6                   Make sense?

7           A     Right. Yes.

8           Q     So you're required to be fair and impartial, to  
9 follow the law, and to have not already committed yourself  
10 to a verdict; in other words, to be able to say to yourself,  
11 "You know what? I'm going to wait, and I'm going to hear  
12 all the evidence and be open-minded, and then I'm going to  
13 base my verdict on what the evidence shows."

14                   So if you'll keep those three things in mind,  
15 because I'm going to kind of keep coming back to them.

16                   Do they make sense to you?

17          A     Yes, they do.

18          Q     If you yourself -- we talked a little bit about  
19 the death penalty. If you yourself were the legislature and  
20 the decision today was, do you want to keep the death  
21 penalty, or do you want to abolish it, what would your  
22 decision be?

23          A     Keep it.

24          Q     And you think, like you've said before, it's  
25 appropriate in some cases?

1           A     Yes.

2           Q     I want to talk for a minute about the difference  
3 between murder and capital murder. You've heard me say that  
4 a couple of times already.

5                     I use the term -- you hear "just murder" --  
6 you will hear that many times, which sounds awful,  
7 especially to the family of whoever was murdered -- or you  
8 will hear the term "plain vanilla murder," but those terms  
9 are used to distinguish two different crimes.

10                    For example, say I take a gun and I shoot  
11 Mr. Bingham in the head five times. I hate him. You know,  
12 he's a mean boss. He lives in a better house than I do,  
13 drives a better car than I do, sleeps on a better mattress  
14 than I do. I can't stand him. And I walk up to him, and  
15 I've had it, and I shoot him in the head five times.

16                    Do you think I can get the death penalty for  
17 that?

18           A     Just all of a sudden, without any thought? I  
19 wouldn't think so.

20           Q     And that's a good answer. I can't.

21                    That's what we call just murder, plain  
22 murder. There has to be -- now, the legislature, for  
23 that -- we'll talk about the range of punishment in a little  
24 bit. That's a first degree felony. Range of punishment is  
25 five to ninety-nine or life. No difference, ninety-nine or

1 life, and we're going to talk about that in a minute.

2 But to have a capital murder charge, there  
3 has to -- we call it murder plus something else. There are  
4 a lot of different ways it can be committed.

5 You can murder more than one person, if I  
6 shoot Matt Bingham and Brett Harrison, I kill more than one  
7 person in the same transaction; if I murder a child under  
8 the age of six; if I kill someone for the money or I hire  
9 someone to kill Mr. Bingham; if I murder a police officer or  
10 a fireman in the line of duty; if I murder someone while in  
11 the course of committing other crimes, robbery or burglary,  
12 aggravated kidnapping, or sexual assault or arson.

13 Does that make sense to you, that there's a  
14 distinction?

15 A Yes.

16 Q Tell me why there would be a difference between  
17 murder and these other offenses.

18 A Oh, let's see. How do I put it? Let me get my  
19 thoughts together. Because it's crime upon crime.

20 Q Sure. More than a murder?

21 A Right. Right.

22 Q Do you think it would be to discourage those  
23 things from happening?

24 A Yes.

25 Q Is there a reason to discourage someone from



1 killing a child under the age of six?

2 A Yes.

3 Q Or to discourage someone from -- do you know what  
4 robbery or burglary, what those means to you?

5 A Yes.

6 Q If you're going to steal someone's things, then  
7 the law would try to discourage you from killing the person.

8 Does that make sense to you?

9 A Yes.

10 Q In Texas, we have what's called a bifurcated trial  
11 system. Have you heard of that before?

12 A A what?

13 Q Bifurcated. Big, long, fancy word for meaning  
14 there are two parts to it.

15 The first one is the guilt or innocence  
16 stage. And all that you're going to hear about in that is  
17 the crime itself. Did a person, on or about a certain day,  
18 here in Smith County, commit a crime? That's the guilt  
19 phase, guilt or innocence. The jury makes a decision. They  
20 either did or they didn't.

21 If you find the defendant did and is guilty,  
22 then you move to the punishment phase of the trial, which is  
23 a real different phase of the trial. You hear more  
24 evidence, different kind of evidence. I say it's the good,  
25 the bad, and the ugly part of the trial. You know, you get

1 to hear about the defendant, about things that wouldn't be  
2 admissible in the first part of trial.

3 Does that make sense to you, that you would  
4 hear more about the defendant himself in the punishment  
5 phase of the trial?

6 A Yeah. Yes, to give you a chance to know or to  
7 think you know whether there was a reason, you know, of why  
8 a person did something.

9 Q Sure. And those would be the types of issues that  
10 you would hear in punishment.

11 And does it make sense that there should be a  
12 level -- more of a level playing field in the  
13 guilt/innocence phase, not judge a person, for example?

14 And we'll talk about some extraneous  
15 offenses, but if a person, say, committed rape three times  
16 before, and then they are charged with this rape, should  
17 this fourth time stand on its own, the facts of this case?

18 Did the defendant rape this person in this  
19 trial? And then in punishment, you would deal with, well,  
20 how many times has done it before?

21 Do you have children?

22 A Yes.

23 Q Do you punish your child based upon things like  
24 that? You know, we've got a prosecutor in my office --

25 A Yes. Yes.